

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ACUSHNET COMPANY, et al.,

Plaintiffs,

v.

COATERS, INC., et al.,

Defendants.

Civil Action No. 93-11219-REK

181169



**SULLIVAN'S LEDGE GROUP'S PROFFER OF EVIDENCE REGARDING LIABILITY
OF DEFENDANT FEDERAL PACIFIC ELECTRIC COMPANY**

Pursuant to the Court's direction, the plaintiffs known as the Sullivan's Ledge Group¹ proffer the following evidence to establish the liability of defendant Federal Pacific Electric Company ("FPE") under section 107(a)(3) of CERCLA² for costs incurred by the Sullivan's Ledge Group in connection with the Sullivan's Ledge Superfund Site ("Sullivan's Ledge").³

The legal theories supporting a finding of direct liability against FPE under section 107(a)(3) of CERCLA are set forth in a separate statement that the Sullivan's Ledge Group is concurrently submitting to the Court today.

¹ The Sullivan's Ledge Group includes plaintiffs Acushnet Company, Amtel, Inc., United Dominion Industries, AVX Corporation, Berkshire Hathaway, Inc., Bridgestone/Firestone, Inc., Chamberlain Manufacturing Corporation, Commonwealth Electric Company, Commonwealth Gas Company, Emhart Industries, Inc., The Goodyear Tire & Rubber Company, Paramount Communications, Inc. and Teledyne Rodney Metals, a Division of Teledyne Industries, Inc.

² Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

³ The Sullivan's Ledge Group reserves the right to amend or supplement this proffer.

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**FPE IS LIABLE UNDER CERCLA §107(a)(3) AS A
JOINT VENTURER WITH CDE**

I. FPE and CDE Were Engaged in a Joint Venture to Manufacture and Sell Power Capacitors

A. Background: FPE's Power Capacitor Operations Were Transferred to the New Bedford Plant "By Agreement" Between CDE and FPE

1. FPE, a Delaware corporation, began to purchase the stock of Cornell-Dubilier Electric Corporation ("CDE") in 1959. By 1960, FPE owned a majority of the shares issued by CDE.⁴ During this same time period, FPE personnel shut down Tobe Deutschmann Electric, a subsidiary of CDE, located in Norwood, Massachusetts, and transferred salvageable operations from Norwood to other CDE locations.⁵
2. During the 1950s, Tobe Deutschmann manufactured a certain type of capacitor known as the "power capacitor"⁶ at its Norwood plant.⁷ When FPE closed Tobe Deutschmann, the power capacitor operations were consolidated at a CDE plant located in South Plainfield, New Jersey.⁸
3. Power capacitors were manufactured at CDE's South Plainfield plant in the early 1960s.⁹ Sometime in 1961 or early 1962, power capacitor operations were moved from CDE's South Plainfield plant to an FPE plant located in Newark, New Jersey.¹⁰ According to a former FPE employee, FPE decided to move CDE's South Plainfield operations to

⁴ FPE's Responses to Government's First Set of Interrogatories, No. 34 (Tab 92).

⁵ Affidavit of Glenn Ronk ("Ronk Affidavit") at paras. 4-6 (Tab 41).

⁶ Power capacitors are sometimes referred to as power factor capacitors, power factor correction capacitors, film capacitors, high or low voltage capacitors, utility capacitors, or industrial capacitors.

⁷ Sevigny Depo. at 8 (Tab 153).

⁸ Sevigny Depo. at 9-10 (Tab 153).

⁹ Brosnahan Depo. I at 15-16 (Tab 134). Joseph Sevigny ran power capacitor operations in South Plainfield plant during this time. Although the South Plainfield plant was a "CDE" plant, Mr. Sevigny was employed and paid by FPE. Sevigny Depo. at 14-16 (Tab 153).

¹⁰ Brosnahan Depo. I at 16-17 (Tab 134).

Newark in order "to consolidate with all the rest of the Federal Pacific plants."¹¹

4. FPE manufactured power capacitors at its Newark plant from approximately 1962 to 1967.¹² In 1967 or 1968, "by agreement between CDE and FPE," power capacitor manufacturing operations were again transferred -- this time to the CDE plant in New Bedford, Massachusetts ("the New Bedford plant").¹³ Glenn Ronk, CDE's President at the time, testified that the transfer of power capacitor operations to New Bedford was made "at the request of FPE."¹⁴ Shortly after this transfer occurred, FPE stopped making power capacitors in Newark.¹⁵
5. Power capacitors were manufactured at the New Bedford plant until the mid-1970s when FPE discontinued the line.¹⁶

B. FPE Monitored, Contributed to, and Participated in the Design, Production and Manufacture of Power Capacitors

1. The equipment used to manufacture the power capacitors was transferred from FPE's Newark facility to the New Bedford plant. Seigny Depo. at 113, 138-139 (Tab 153). While bugs were being worked out of the FPE equipment as a result of the transfer, power capacitors were manufactured using CDE's equipment already in place at the New Bedford plant. Id.
2. FPE personnel attended meetings at the New Bedford plant regarding the development of new power capacitor equipment. Minutes of a power capacitor meeting held on October 17, 1968 at the New Bedford plant show that at least 3 out of the 6 individuals in attendance were FPE employees: Houston Jones, Phil Fairman, and Joseph Seigny. Seigny Depo. at 25, 29-30 (Tab 153). The minutes of the meeting indicate that the topics of discussion included marketing and sales of

¹¹ Seigny Depo. at 10, 20 (Tab 153).

¹² Brosnahan Depo. I at 13-14 (Tab 134).

¹³ Seigny Depo. I at 26 (Tab 153); Brosnahan Depo. VII at 19 (Tab 140); Declaration of Thomas J. Brosnahan ("Brosnahan Declaration"), dated January 16, 1991, at para. 30 (Tab 39).

¹⁴ Ronk Depo. II at 308 (Tab 152).

¹⁵ Brosnahan Depo. I at 21 (Tab 134).

¹⁶ The utility power capacitor line was discontinued sometime between 1973 and 1975. Peterson Depo. IV at 125 (Tab 149).

power capacitors, "a film capacitor development program," and a "product development and facilities plan." Specifically, the meeting minutes state that "major expenditures in facilities will be required at New Bedford in the areas of impregnation equipment, Heat Room/test facilities, and winding equipment in order that New Bedford be capable of efficiently producing high quality film capacitors."

- a. A true and accurate copy of the 10/17/68 power capacitor meeting minutes is found at Tab 74.
3. In a sworn statement, Roland Savoie, a plant engineer at the New Bedford plant from 1955 until the 1980s, stated that "people from FPE would come to CDE to oversee the power capacitor operations."
 - a. A true and accurate copy of the Affidavit of Roland Savoie is found at Tab 40.
4. In a sworn statement, Armando DaRosa, a foreman of the New Bedford power capacitor manufacturing operations, recalled that on two occasions he "was sent to Federal Pacific Electric Company's facility in Newark, New Jersey for training on how to build power capacitors." DaRosa Affidavit at para. 5.
 - a. A true and accurate copy of the Affidavit of Armando DaRosa is found at Tab 38.
5. Joseph Sevigny, FPE's power capacitor marketing manager in New Bedford, testified that he acted as "a buffer between the manufacturing engineering arm of the company and the sales division." Specifically, his function was to determine what FPE's customers wanted and then to discuss his findings with the head of the CDE manufacturing engineering department at the New Bedford plant to see if the product could be manufactured. Sevigny Depo. at 34-35 (Tab 153).
6. While on the FPE payroll, F. William Steele directed CDE personnel at the New Bedford plant on the proper labelling of power capacitors.
 - a. A true and accurate copy of Mr. Steele's letter to Mr. Sylvia (CDE New Bedford) is found at Tab 62.
7. FPE's laboratory, Belmont Lab, in North Carolina "coordinated the fusing of power capacitors." Peterson Depo. II at 17-18 (Tab 148).
8. FPE's laboratory in Newark, New Jersey performed thermal stability tests on new design power capacitor units manufactured in New Bedford. Sevigny Depo. at 108-109 (Tab 153).

9. On November 5, 1969, J. Fortounes (CDE Engineer, New Bedford) sent a memorandum to F. William Steele (then FPE's New Bedford Marketing Manager) in response to an earlier inquiry by Mr. Steele, providing a run down of various tests that were performed on power capacitors. The memorandum concludes "reports on all tests completed are attached. Others will be forwarded to you as they become available."
 - a. A true and accurate copy of Mr. Fortounes' memorandum to Mr. Steele is found at Tab 69.
10. A report dated November 21, 1968 and prepared by D. Sylvia (CDE New Bedford) outlines a **"FPE/CDE Program,"** that involved a large capital investment by FPE/CDE in a new capacitor impregnation system and the development of a film power capacitor. The report consistently refers to the manufacture of power capacitors as the **"FPE/CDE Program."**
 - a. A true and accurate copy the Sylvia report is found at Tab 72.
11. On November 3, 1969, F. William Steele, FPE's Marketing Manager for Power Capacitors, sent an FPE inter-office memorandum to Harold Knudson (then FPE's Vice President) regarding power capacitors. The memorandum, which concerned a customer complaint, states "the New Bedford personnel have since been made aware of the importance of prompt action in regard to orders for industrial power capacitors. We have obtained the division manager's commitment to ship stock capacitors within five days after receipt of the order."
 - a. A true and accurate of Mr. Steele's memorandum to Mr. Knudson is found at Tab 27.
12. W. Beetsch (FPE Employee, Accounting) sent an FPE inter-office memorandum to Wayne Peterson (then CDE's Executive Vice President) regarding New Bedford inventory. The memorandum outlines various inventory procedures, including procedures to more efficiently report "scrap" generated by power capacitor production.
 - a. A true and accurate copy of Mr. Beetsch's memorandum is found at Tab 11.
13. On February 25, 1972, Richard Noonan (FPE's Vice President) sent an FPE inter-office memorandum to Edwin Jacobson (FPE President, CDE Chairman of the Board) entitled "New Bedford Power Capacitor

Plant." The memorandum provides a review of New Bedford power capacitor activities, including a detailed breakdown on the subject of marketing, engineering, manufacturing capability, and costs.

- a. A true and accurate copy of Mr. Noonan's memorandum to Mr. Jacobson is found at Tab 17.
 - b. A true and accurate copy of the officers and directors of CDE and FPE for 1972 (as listed in the FPE and CDE Annual Reports for those years) is found at Tab 127.
14. Wayne Peterson recalled what prompted Mr. Noonan's February 25, 1972 "New Bedford Power Capacitor Plant" memorandum. "We (Mr. Noonan (FPE's Vice President) and Mr. Peterson (then CDE's Executive Vice President)) were planning to expend a lot of dollars to improve the process and introduce a new design and to effect a far superior handling of Aroclor¹⁷ for this particular design. The review was one of personal interest on the part of Dick Noonan. He was selling these products to his own customer base. Another was a specific interest on the part of the expenditure by Ed Jacobson. He wanted a second opinion." Peterson Depo. II at 9-10 (Tab 148). (Emphasis added).
 15. On May 18, 1972, while F. William Steele was a CDE Marketing Manager at the New Bedford plant, Mr. Steele sent an FPE inter-office memorandum to Richard Noonan (FPE's Vice President), Harold Knudson (FPE's Executive Vice President) and others regarding "Power Capacitor Equipment Classes 8110 through 8115." The memorandum states that **FPE/Cornell-Dubilier** contributed technical data and application information for use in a recent Plant Engineering article. "In fact, the capacitor installation shown in Figure 2 [of the article] is a photograph of an **FPE/Cornell-Dubilier power factor correction capacitor assembly.**"
 - a. A true and accurate copy of Mr. Steele's memorandum is found at Tab 57.
 16. FPE maintained "Product Development Program Reports" for its "Cornell-Dubilier Division" in New Bedford. These monthly charted on a product-by-product basis (1) whether the product was a new or existing product; (2) the starting date of the project; (3) the planned completion date of the project; (4) the estimated increase in net sales and gross profit; (5) the "developmental cost budget," including

¹⁷ As described in the October 28, 1996 testimony of Garrett Randall Graham, Aroclor is a Monsanto trade name for PCB-contaminated dielectric fluid/oil.

engineering and other costs; and (6) the development costs to date, including engineering and other costs. These reports addressed the development of power capacitors and were distributed to the following FPE and FPE/CDE officers and directors: E. Jacobson (FPE's President, CDE's Chairman of the Board), H. Knudson (then FPE's Executive Vice President), H. Young (FPE's Treasurer and Vice President of Finance, CDE's Treasurer and Assistant Treasurer) and T. Brosnahan (Controller for FPE and CDE, Assistant Secretary for FPE, Assistant Treasurer for CDE).

- a. True and accurate copies of various FPE Product Development Program Reports are found at Tab 79.

- 17. In 1969, FPE's Marketing Manager for power capacitors in New Bedford, F. William Steele, sought to purchase equipment including galvanized steel pole racks and stack rack assemblies for the manufacture of power capacitors at the New Bedford plant.

- a. A true and accurate copy of Mr. Steele's memorandum regarding galvanized steel pole racks is found at Tab 68.

C. Power Capacitors Manufactured at the New Bedford Plant Were Stamped With FPE's Name and Marketed and Sold by FPE as an FPE Product to FPE's Customers

1. Power Capacitors Manufactured at the New Bedford Plant Were Stamped With FPE's Name

- a. During the time that Wayne Peterson was general manager of the New Bedford plant (1968-1970), power capacitors that carried the FPE label were manufactured at the New Bedford plant. Peterson Depo. I at 105-106, 108-109 (Tab 147). According to Mr. Peterson, during that period, "we had FPE labelled capacitors. We had CDE labelled capacitors in the same product class. If CDE sold a capacitor, we put a CDE label on it. If FPE sold a capacitor, we put a FPE label on. Later the label was changed to include both names." Peterson Depo. I at 113-114 (Tab 147).
- b. Manuel Correia, a maintenance worker at the New Bedford plant during the early 1970s, testified at trial that the power capacitors he disposed of at Sullivan's Ledge had the FPE logo on them.
 - (i) A true and accurate copy of the Partial Trial Transcript of October 23, 1996 at Tab 42.

- c. Joseph Sevigny, an FPE employee who marketed power capacitors in New Bedford from 1967 to 1969, testified that power capacitors were labeled with the FPE name. Sevigny Depo. at 26-27, 51-52 (Tab 153).
- d. Thomas Brosnahan, FPE's 30(b)(6) witness, testified that "when the utility sales force of Federal Pacific sold the power capacitors that were manufactured by New Bedford, New Bedford used an FPE label. Later on, to eliminate two types of labels, they just made a combined FPE/CDE label." Brosnahan Depo. VII at 71-72 (Tab 140).
- e. Armando DaRosa, foreman of the New Bedford power capacitor manufacturing operations, recalled the name Federal Pacific Electric Company on the nameplates of power capacitors manufactured at the New Bedford plant. Affidavit of Armando DaRosa at para. 3.
 - (i) A true and accurate copy of the DaRosa Affidavit is found at Tab 38.

2. FPE Marketed and Sold Power Capacitors Manufactured at the New Bedford Plant to FPE's Customers

- a. Power capacitors manufactured at the New Bedford plant were sold by FPE personnel to FPE customers. Sevigny Depo. at 143-144 (Tab 153). Sales materials described power capacitors as FPE products. The terms of any power capacitor sale were defined by FPE's standard practice manual and by Phil Fairman (FPE Marketing) and Harold Knudson (FPE's Vice President of Sales). Sevigny Depo. at 59-60, 63-64 (Tab 153). Mr. Fairman and Mr. Knudson made the final decision with respect to the pricing of power capacitors and the terms of their sale. Sevigny Depo. at 63-64 (Tab 153).
- b. FPE's Power Equipment Systems Division sold power capacitors manufactured at CDE's New Bedford plant. Brosnahan Depo. VII at 21 (Tab 140).
- c. FPE and CDE made a concerted decision to refer to New Bedford power capacitors as FPE products. On August 4, 1971, F. William Steele (then CDE New Bedford Marketing Manager) sent an FPE inter-office memorandum to Richard Noonan (FPE Vice President, Power Equipment Systems Division) in which Mr. Steele stated:

"It has been our practice to submit all bids covering power capacitors and equipments under the name of Federal Pacific, not Cornell-Dubilier, to retain product identification with the FPE Power Equipment Systems Division. All contracts are executed as FPE, and all invoices rendered request payment to FPE. This procedure has been in effect many years."

- (i) A true and accurate copy of Mr. Steele's FPE inter-office memorandum to Mr. Noonan is found at Tab 77.
- d. Glenn Ronk (CDE's President) testified that FPE tookover over the marketing of power capacitors. Ronk Depo. II at 347-348 (Tab 152).
- e. Charles Brino, who was at various times an accountant for FPE and CDE, testified that FPE centralized marketing efforts, including marketing efforts for power capacitors manufactured by CDE. Brino Depo. VI at 101 (Tab 133).
- f. On September 25, 1969, F. William Steele (then FPE's Marketing Manager for power capacitors in New Bedford) sent an FPE inter-office memorandum to J.R. Bokan (Newark) regarding procedures for paying sales "commissions" to power capacitor agents. The memorandum reads in part: "The matter of when to pay power capacitor agency sales commissions is entirely the jurisdiction of FPE."
 - a. A true and accurate copy of Mr. Steele's memorandum to Mr. Bokan is found at Tab 28.
- g. Price quotations for power capacitors manufactured at the New Bedford plant were submitted to customers under the name FPE. Sevigny Depo. at 52 (Tab 153). Similarly, customers were billed on FPE invoices with the names "FPE" and "Cornell-Dubilier Electronics Power Capacitor Division, New Bedford, Mass." printed on them.
 - (i) True and accurate copies of an FPE quotation for a power capacitor manufactured in New Bedford and an accompanying FPE invoice is found at Tab 8.
- h. In its summary judgment papers, FPE did not dispute that "customers of FPE received materials referring to both high voltage utility class capacitors and low voltage utility industrial capacitors (power capacitors) manufactured at the New Bedford plant as FPE/CDE power capacitors."

- (i) Compare para. 282 of the Sullivan's Ledge Group's Statement of Material Undisputed Facts in Support of Motion for Partial Summary Judgment Against Defendant Federal Pacific Electric Company with Defendant Federal Pacific Electric Company's Statement of Material Facts as to Which a Genuine Dispute Exists at Tab 88.

3. FPE Sold and Marketed Power Capacitors Manufactured at the New Bedford Plant to Better Serve its Utility Customers

- a. Thomas Brosnahan, FPE's 30(b)(6) witness, explained that the reason CDE did not market power capacitors to the utility industry was because CDE "had no basis in the utility marketplace. It would have been too expensive for them to - the only thing that they [CDE] were selling, or had to offer utility was power capacitors. And when you go with a customer, you had to have a package. FPE had the package; switchgear, transformers, and the other big electrical fit was power capacitors." Brosnahan Depo. VII at 76 (Tab 140).
- b. Joseph Sevigny, who worked at the New Bedford plant as FPE's Marketing Manager, testified that FPE marketed power capacitors manufactured in New Bedford because "Cornell-Dubilier was not an electrical company. It was an electronic company and had no reps or salesmen calling on utilities or industrial customers of this type." Sevigny Depo. at 55 (Tab 153); Steele Depo. I at 68-69 (Tab 154). FPE salesmen sold power capacitors manufactured by CDE to utilities. Brosnahan Depo. V at 496 (Tab 138). The fact that FPE's name was well known to the utility industry was helpful to Mr. Sevigny in marketing power capacitors to that industry. Sevigny Depo. at 57-58 (Tab 153).

4. FPE's Power Capacitor Marketing Employees Were Stationed at the New Bedford Plant

- a. During a five period (1967-1972), FPE had three FPE employees stationed at CDE's New Bedford plant. These three FPE employees -- Joseph Sevigny, F. William Steele, and Joseph Gracia, Jr. -- marketed power capacitors manufactured at CDE's New Bedford plant.
- b. Joseph Sevigny: Joseph Sevigny was an FPE employee who, from 1967 to 1969, worked out of CDE's New Bedford plant as marketing manager for power capacitors. Sevigny Depo. at 25-27 (Tab 153). According to Mr. Sevigny, while he was in New Bedford (1967-1969), FPE had responsibility for marketing and

sales of power capacitors manufactured in New Bedford. Seigny Depo. at 49-50 (Tab 153).

- c. F. William Steele: An example of FPE's extensive involvement in power capacitor activities at the New Bedford plant can be observed in the events surrounding the deployment of Mr. F.W. Steele, a marketing manager at FPE. In 1969, FPE transferred Mr. Steele from its own switchgear division in Newark to the Power Capacitor Division at CDE's New Bedford, Massachusetts plant. Steele Depo. I at 16 (Tab 154).

During 1969-1970, Mr. Steele worked for and was paid by FPE, but worked at the New Bedford plant, where he was marketing manager for power capacitor operations. Steele Depo. I at 21 (Tab 154). While marketing CDE's capacitors, Mr. Steele reported to Houston Jones and Richard Noonan, both FPE employees at FPE's Newark headquarters. Steele Depo. I at 27 (Tab 154); Steele Depo. I at 33-36 (Tab 154).

During the time in which Mr. Steele was an FPE employee, there were three CDE employees who worked directly for him. Steele Depo. I at 21-22, 40 (Tab 154). In addition, Mr. Steele worked closely with CDE's production manager for power capacitors, to coordinate the marketing and production functions for power capacitors. Although an FPE employee during the period 1969-1970, Mr. Steele accessed CDE's production area - he did not have to seek authorization to do so. Steele Depo. I at 42-43 (Tab 154). He also oversaw the preparation and dissemination of sales literature for the products to, probably, more than 100 FPE customers. Steele Depo. I 22-23 (Tab 154).

In July, 1970, Mr. Steele was advised by FPE's Richard Noonan that he was as of then a CDE employee and was to be transferred to CDE's payroll. Steele Depo. I at 33 (Tab 154); Steele Depo. II at 304-305 (Tab 155). However, Mr. Steele continued to be paid by FPE for another six months. Steele Depo. I at 33 (Tab 154). With the supposed change in employee status, his salary, job title, and day-to-day duties remained exactly the same as they had been as an FPE employee. Steele Depo. II at 237-38 (Tab 155). Mr. Steele continued to work with the same products and accrued vacation benefits at the same rate. Steele Depo. II at 273-74, 308 (Tab 155). As a CDE employee, Mr. Steele had access to FPE's customer lists. Steele Depo. II at 261 (Tab 155).

While on CDE's payroll, Mr. Steele reported to Harry Knudson, FPE's Vice President of Sales, who was not an officer

or director of CDE. Steele Depo. I at 36 (Tab 154). Mr. Steele was surprised to learn, during a recent dispute with FPE over the amount of a pension he is receiving from FPE that he was not considered an FPE employee while at New Bedford during 1971-1975, when he was paid by CDE. Steele Depo. II at 240 (Tab 155).

- d. Joseph Gracia, Jr.: Several documents show that Mr. Gracia acted as FPE's "marketing specialist" at very least in the year 1972.¹⁸ Specifically, in 1972, an FPE quotation sent to Marco Electric by Mr. Gracia contains the following signature line -- "FEDERAL PACIFIC ELECTRIC COMPANY, Joseph Gracia, Jr., Marketing Product Specialist, Power Capacitor Division." Moreover, later correspondence from a H.C. Martin, the president of Marco Electric, is addressed to "Federal Pacific Electric Company, 1605 E. Rodney French Boulevard, New Bedford, Massachusetts 02744, Attention Joe Gracia." This is the address of the Cornell-Dubilier facility in New Bedford.

- (i) True and accurate copies of correspondence between Mr. Gracia and Marco Electric are found at Tab 8.

- e. In its summary judgment papers, FPE did not dispute that "there was an FPE/CDE joint marketing effort for both the high voltage utility class and low voltage industrial capacitors" (i.e., power capacitors).

- (i) Compare para. 270 of the Sullivan's Ledge Group's Statement of Material Undisputed Facts in Support of Motion for Partial Summary Judgment Against Defendant Federal Pacific Electric Company with Defendant Federal Pacific Electric Company's Statement of Material Facts as to Which a Genuine Dispute Exists at Tab 87.

5. FPE Held Power Capacitors Manufactured at the New Bedford Plant Out to its Own Shareholders as FPE Products

- a. The 1968 FPE Annual Report states "new high voltage capacitors developed by your Company's [FPE's] Electronics Division, Cornell-Dubilier, are being used increasingly by virtually every important manufacturer of electrostatic copying machines." High voltage capacitors are power capacitors. Peterson Depo. I at 79-80 (Tab 147).

¹⁸ Mr. Gracia has never been disclosed by FPE as a witness with knowledge, and therefore Mr. Gracia has never been deposed in this action or any related action.

(i) A true and accurate copy of the 1968 FPE Annual Report is found at Tab 123.

b. The 1969 FPE Annual Report reads "in 1969 the company [FPE] introduced a new line of capacitors for use by electric utilities. The new capacitor uses synthetic film as the dielectric in place of the paper previously used. This new insulation keeps losses 70% lower than the paper insulated capacitors they replace. The new design, drawing on the know-how of Cornell-Dubilier, incorporates an 'extended foil' concept." FPE's "new line of capacitors" was in fact a line of power capacitors developed as part of a "FPE/CDE Program." See Report of D. Sylvia entitled "Report on Cornell-Dubilier and the Power Capacitor Program Kraft/Film.

(i) A true and accurate copy of the 1969 FPE Annual Report is found at Tab 124.

(ii) A true and accurate copy of the Sylvia report entitled is found at Tab 72.

6. Power Capacitors Manufactured by CDE Originally Were Sent to FPE; FPE In Turn Shipped These Capacitors to FPE's Own Customers

a. When CDE manufactured power capacitors at New Bedford, customers placed their orders with FPE. Originally, capacitors were transferred from CDE and shipped through FPE. Peterson Depo. IV at 134-135 (Tab 150).

D. Power Capacitor Sales Were Billed by FPE and the Sale Proceeds Were Collected by FPE

1. Charles Brino, who at various times was an accountant for FPE and CDE, testified that FPE billed customers for the sale of power capacitors manufactured by CDE. Brino Depo. VI at 72 (Tab 133). Customers wrote checks to FPE. Sales were credited to an inter-company account between CDE and FPE and recorded on CDE's books. No cash for the sale was actually transferred to CDE. Brino Depo. VI at 88-89 (Tab 133).

2. Invoices sent to power capacitor customers had the names "FPE" and "Cornell-Dubilier Electronics Power Capacitor Division, New Bedford, Mass." printed on them.

- a. A true and accurate copy of an FPE/CDE invoice is found at Tab 85.

E. FPE and CDE Split the Proceeds on the Sale of Power Capacitors Manufactured by CDE

1. Wayne Peterson, who served as CDE's Executive Vice President and later CDE's President, testified that FPE received a "commission" on the sales of power capacitors manufactured by CDE. Peterson Depo. IV at 134 (Tab 150).
2. F. William Steele, who at various times was New Bedford Marketing Manager for CDE and FPE, testified that when an FPE employee sold a capacitor manufactured by the power capacitor division at New Bedford, profits from the sale went to FPE. Steele Depo. II at 234-235 (Tab 155).
3. Thomas Brosnahan, (Controller for FPE and CDE, Assistant Secretary for FPE, Assistant Treasurer for CDE), has stated that "[t]he amount paid to FPE by CDE was an agreed upon sales commission between the two companies." Brosnahan Declaration at para. 30.

- a. A true and accurate copy of the Brosnahan Declaration is found at Tab 39.

4. CDE and FPE used an inter-company account to transfer capital between the two companies. A summary of 1960-1983 inter-account activity shows that FPE charged CDE \$13,658,865 for "marketing services and administration charges," \$1,647,628 for the "cost of sales to FPE customers," and \$27,025,982 for the "product purchases by FPE from CDE." As described above, FPE marketed and sold power capacitors manufactured at the New Bedford plant. By 1983, CDE owed FPE \$6,786,818.

- a. A true and accurate copy of the summary of FPE/CDE inter-account activity is found at Tab 95.

F. CDE and FPE Personnel Considered the Manufacture and Sale of Power Capacitors to be a Joint Undertaking By FPE and CDE

1. Charles Brino, who at various times was an accountant for FPE and CDE, testified that FPE and CDE "collaborated" on power capacitors. Brino Depo. VI at 71 (Tab 133).
2. Wayne Peterson was chief operating officer of CDE from 1970 to 1977. As Mr. Peterson described it, during that time, he and Richard

Noonan (FPE's Vice President) "were involved in business together, power factor business for the utilities. We manufactured; he sold." Periodically, Mr. Peterson and Mr. Noonan had business reviews, discussions which involved designs, facilities, service, and pricing. Peterson Depo. II at 5-6 (Tab 148).

3. Mr. Peterson was also asked whether the manufacturing of capacitors was carried on a joint-agreement basis with FPE. Mr. Peterson responded: "we built to order . . . he (Mr. Noonan, FPE's Vice President) placed the order; we filled the order" Peterson Depo. II at 29 (Tab 148).
4. In March 1972, F. William Steele (then CDE New Bedford Marketing Manager) issued a Marketing Information Letter bearing the letterhead **"FPE POWER CAPACITORS."** The letter referred to the continued progress of the **"FPE/Cornell-Dubilier Power Capacitor Division."** (emphasis added).
 - a. A true and accurate copy of Mr. Steele's letter is found at Tab 15.
5. On August 26, 1970, during the time F. William Steele was on the FPE payroll, Mr. Steele sent a memorandum to D. Sylvia (CDE New Bedford) regarding **FPE/CDE Order 63-3050-37871-05.** The memorandum states: "We must insure a more positive inspection of incoming materials to prevent such sloppy material shipping to our customers. It is FPE/CDE of whom the customer will be critical, not our vendors, as we are supplying the final product."
 - a. A true and accurate copy of Mr. Steele's letter to Mr. Sylvia is found at Tab 23.
6. While an employee of FPE, F. William Steele sent out a sales bulletin to utility account sales representatives announcing that the **"FPE/Cornell-Dubilier New Bedford plant"** had power capacitor inventory it was willing to sell at reduced prices. The bulletin refers to **FPE/CDE catalogue numbers.**

Moreover, another sales bulletin sent to utility sales representatives on the same day states that **"FPE/Cornell-Dubilier has in stock, ready for immediate shipment, a large quantity of the most common ratings of power capacitors."**

 - a. True and accurate copies of sales bulletins are found at Tabs 12 and 26.

7. In a FPE inter-office memorandum dated November 4, 1968, Houston Jones ("FPE-Newark") forwarded to Wayne Peterson ("CDE-New Bedford") a sales forecast that Mr. Jones had prepared. The forecast showed "FPE/CDE's share of the film capacitor market in units and dollars and a forecast of the paper capacitor business for the years 1969 through 1972 and for 1975." (emphasis added).

a. A true and accurate copy of Mr. Jones' memorandum to Mr. Peterson is found at Tab 73.

8. F. William Steele, at various times FPE's New Bedford Marketing Manager and CDE's New Bedford Marketing Manager, testified that there was a joint CDE and FPE marketing effort for power capacitors. Steele Depo. I at 125-126 (Tab 154).

9. Joseph Sevigny, FPE's New Bedford Marketing Manager, testified that the expression "FPE/CDE" meant "FPE was selling Cornell-Dubilier products. You know, it was extensively used around -- not just in power capacitors, wherever people brought up one company or the other." Sevigny Depo. at 70-71 (Tab 153).

G. FPE Management Approved the Budget and Funds for CDE's Power Capacitor Manufacturing Operations

1. On March 20, 1969, Glenn Ronk (CDE's President) wrote to Harold Knudson (then FPE's Vice President of Sales) forwarding a request for approval of capital expenditure (RACE) for the purchase of new capacitor manufacturing equipment for the New Bedford plant. In his deposition, Mr. Ronk explained that this RACE was prompted by the move of power capacitor operations from Newark, New Jersey to New Bedford. Mr. Ronk stated: "we [CDE] wanted to make sure that we didn't have to pay all the money because we didn't have a very big capital budget, and we were transferring this at the request of Federal to build them and we would sell them." Mr. Ronk further explained that with this RACE, he was trying to get money. Mr. Ronk thought this money would come from FPE. Ronk Depo. II at 307-308 (emphasis added) (Tab 152).

a. True and accurate copies of Mr. Ronk's letter to Mr. Knudson and the accompanying RACE are found at Tab 70.

2. On March 24, 1969, Harold Knudson (then FPE's Vice President of Sales) wrote a letter to Glenn Ronk (CDE's President) in which he acknowledged the receipt of "copies of the RACE's (request for approval of capital expenditures) covering the equipment required to get us in the film capacitor (sic) and make capacitors at (sic) sufficient rate

to meet demands, and at economical costs." Knudson Depo. II at 149-151 (Tab 143) (emphasis added). In 1969, at the time that Mr. Knudson received this request, Mr. Knudson held no position within CDE.

- a. A true and accurate copy of Mr. Knudson's letter to Mr. Ronk is found at Tab 29. Knudson Depo. I at 70-71 (Tab 142).
 - b. A true and accurate copy of a list of all 1969 CDE and FPE officers and directors (as listed in the 1969 FPE and CDE Annual Reports) is found at Tab 127.
3. CDE management was required to submit a profit plan -- a proposed budget for the coming year -- to FPE management for approval. Peterson Depo. IV at 8-9 (Tab 150); Brino Depo. VI at 20-21 (Tab 133). This practice carried over into power capacitor operations. On November 28, 1972, Wayne Peterson (then CDE's Executive Vice President) sent a memorandum to D. Blough (CDE) regarding the **Power Capacitor 1973 Profit Plan Review**. Among other things, Mr. Peterson asked Mr. Blough to recast a 1973 report in order to provide further substantiation for the proposed 1973 profit plan and to review forecasted profit levels. A carbon copy of this memorandum was provided to H. Young, H. Knudson, and T. Brosnahan. Mr. Knudson and Mr. Brosnahan were not CDE officers or directors at this time. In 1972, Mr. Knudson was FPE's Executive Vice President and Mr. Brosnahan was Director of Operations Accounting for FPE and CDE. Knudson Depo. II at 115-116 (Tab 143); Brosnahan Depo. I at 47-49 (Tab 134). Neither held a title at CDE. Mr. Young was paid by FPE and served as Treasurer for both CDE and FPE. Brosnahan Depo. I at 86-87 (Tab 134).
- a. A true and accurate copy of Mr. Peterson's memorandum to Mr. Blough is found at Tab 50.
 - b. A true and accurate copy of a list of the 1972 officers and directors of CDE and FPE (as listed in the 1972 Annual Reports) is found at Tab 127.

H. FPE Acknowledged That Both FPE and CDE Were Potentially Liable for Defects in Power Capacitors Manufactured at the New Bedford Plant

1. On April 24, 1970, while F. William Steele was FPE's Power Capacitor Marketing Manager stationed in New Bedford, Mr. Steele sent an FPE inter-office memorandum to Dwayne Blough (CDE), Richard Noonan (FPE's Vice President) and Wayne Peterson (then

CDE's Executive Vice President) regarding "the total future FPE/CDE liability to be caused by the failure of power capacitors. . . ." The memorandum estimated "FPE/CDE's future liability for the Tiny Tim power capacitor" to be \$300,000 - \$450,000.

- a. A true and accurate copy of Mr. Steele's FPE inter-office memorandum is found at Tab 25.

I. The Decision to Terminate the Manufacture of Utility Power Capacitors in New Bedford Was Made Jointly by CDE, FPE and FPE/CDE Personnel

1. Wayne Peterson (then CDE's President) and Mr. Noonan (FPE's Vice President) together recommended to Edward Jacobson (FPE and CDE Chairman of the Board) that the manufacture of utility power capacitors be discontinued. Peterson Depo. II at 21-22 (Tab 148).
2. When the power factor capacitor line was terminated, a reserve account was set up to settle complaints from customers. Units that failed had to be replaced or a credit had to be issued. Mr. Noonan (FPE's Vice President) played a role in handling these complaints. Peterson Depo. II at 27-28 (Tab 148).

J. FPE and CDE Arranged for the Disposal of Waste Containing PCBs and Other Hazardous Substances, Including PCB-Impregnated Reject Power Capacitors, at Sullivan's Ledge

1. The New Bedford Plant Manufactured Power Capacitors

- a. Wayne Peterson, general manager of the New Bedford plant from 1968 to 1970, testified that, when FPE originally transferred its power capacitor operations to New Bedford in 1967, power capacitors were first manufactured in the basement of the main building in the New Bedford plant. Later, some power capacitor operations were transferred to the "shed." Peterson Depo. I at 80-83, 85 (Tab 147).
- b. Curtis Lopes, CDE's 30(b)(6) witness with respect to the manufacturing operations, testified that when the power capacitor operations were moved to New Bedford, some of those capacitors were impregnated in the main buildings and some were impregnated in "annex 3." Lopes Depo. I at 134 (Tab 144).
- c. F. William Steele, who at various times worked as FPE's New Bedford Marketing Manager and CDE's New Bedford

Marketing Manager, testified that, in the late 1960s and early 1970s, power capacitors were manufactured in the "annex building" at CDE's New Bedford plant. Steele Depo. I at 61-62 (Tab 154).

- d. In a sworn affidavit, Roland Savoie, a former engineer at CDE's New Bedford plant, stated that "the Power Division, which was responsible for manufacturing the power capacitors, was located in a separate area in the backyard of CDE's New Bedford plant, apart from other capacitor operations."

- (i) A true and accurate copy of the affidavit of Roland Savoie is found at Tab 40.

2. Power Capacitors Manufactured at the New Bedford Plant Contained PCBs

- a. Armando DaRosa, foreman of the power capacitor manufacturing operations at the New Bedford plant, stated that power capacitors at the New Bedford plant contained PCB oil. DaRosa Affidavit at para. 4.

- (i) A true and accurate copy of the Affidavit of Armando DaRosa is found at Tab 38.

- b. Curtis Lopes, CDE plant engineer and CDE's Rule 30(b)(6) designee for New Bedford plant operations, testified that 90 percent of AC capacitors in the 1950s and 1960s contained PCB dielectric fluid. Mr. Lopes further testified that power capacitors were AC capacitors. Lopes Depo. I at 19, 58 (Tab 144).
- c. Curtis Lopes also testified that the PCB impregnants for power capacitors impregnated in section 3 of the annex were stored in central PCB storage tanks. Lopes Depo. I at 135-136 (Tab 144).
- d. Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, testified in his deposition that power factor class capacitors were impregnated with PCB containing fluid at the New Bedford facility. Peterson Depo. I at 79-82 (Tab 147).
- e. Power capacitors were impregnated with oil that contained PCBs. Brosnahan Depo. I at 95-96 (Tab 134).

3. **The Generation of Wastes Containing PCBs and Other Hazardous Substances Was Inherent in the Manufacture of Power Capacitors**

- a. Curtis Lopes, CDE plant engineer and CDE's 30(b)(6) designee for New Bedford plant operations, testified that PCBs used to impregnate power factor capacitors were filtered in the "annex." Lopes Depo. I at 136-37 (Tab 144). Both Mr. Lopes and Joseph Sevigny (FPE's New Bedford marketing manager) testified that the filtering process generated PCB soaked Fuller's Earth. Sevigny Depo. at 125-27 (Tab 153); Lopes Depo. I at 137-38 (Tab 144). The waste Fuller's Earth was thrown into drums for disposal. Lopes Depo. I at 137-38 (Tab 144).
- b. Mr. Lopes stated that the cans used for making power factor capacitors were degreased in a trichloroethylene ("TCE") vapor degreaser. The degreasing process generated a still residue that was thrown into drums for disposal. Lopes Depo. I at 139 (Tab 144). Leaks and spills from the degreasing operation were picked up with Fuller's Earth and discarded. Lopes Depo. I at 140 (Tab 144).
- c. During the time that Joseph Sevigny worked in New Bedford as FPE's marketing manager, the power capacitors were impregnated using the autoclave system, which Mr. Sevigny described as the "dirty way of making capacitors." Sevigny Depo. at 125 (Tab 153). When the capacitors were removed from the autoclave tank in which they were impregnated, PCB oils spilled onto the floor and were cleaned up. Sevigny Depo. at 128-29 (Tab 153).
- d. Curtis Lopes testified that CDE placed drip pans beneath capacitors impregnated in annex 3 in order to catch PCB drips. The PCBs that collected in the drip pans were thrown into drums for disposal. Lopes Depo. I at 143 (Tab 144). When these drip pans were degreased, the degreasing process generated still residue waste that contained PCBs. Lopes Depo. I at 143 (Tab 144).
- e. According to Curtis Lopes, PCB storage tanks in the annex 3 impregnation room overflowed from time to time. Deposition of Curtis Lopes taken in Lumbermans Mutual Casualty Co. v. AVX Corp., et al., C.A. No. 84-2044 (D. Mass.), Vol. 3 at 96 (Tab 146).
- f. Both Curtis Lopes and Joseph Sevigny testified that power capacitors were degreased in order to remove PCB oil from the outside of the capacitors. Lopes Depo. I at 144 (Tab 144);

Sevigny Depo. at 132 (Tab 153). The degreasing process generated waste PCB oil. Sevigny Depo. at 132 (Tab 153).

- g. Curtis Lopes stated that the power capacitors were painted in the annex. The painting process generated waste paint thinner and paint waste that was thrown in drums for disposal. Lopes Depo. I at 146-47 (Tab 144).
- h. CDE stipulated that the power factor capacitor manufacturing process generated waste Fuller's Earth contaminated with PCBs, still residue containing PCBs and TCE, PCB waste from drip pans, TCE and PCB contaminated still residue from degreasing drip pans, reject capacitors and waste paint.
 - (i) A true and accurate copy of relevant portions (para. 200) of the Marked Responses of Defendant Cornell-Dubilier Electronics, Inc. to Plaintiffs' Proposed Findings of Fact is found at Tab 78.

4. Failed Power Capacitors Were Rejected and Scrapped at the New Bedford Plant

- a. F. William Steele, who at various times was a New Bedford Marketing Manager for CDE and FPE, testified that power capacitors (low voltage industrial capacitors and high voltage capacitors) were scrapped during the period 1969 to 1975. These scrapped power capacitors were stored on-site. Specifically, some of these scrapped power capacitors were kept outdoors. Steele Depo. I at 97-98, 100-103 (Tab 154).
- b. Curtis Lopes, CDE plant engineer and CDE's 30(b)(6) designee for New Bedford plant operations, testified that the capacitors manufactured in section 3 of the shed (or annex) (i.e., power capacitors) were in some cases discarded if they failed tests. Lopes Depo. I at 145 (Tab 144).
- c. Armando DaRosa, foreman of the New Bedford plant power manufacturing operations, states in his affidavit that, when power capacitors failed tests, such capacitors were rejected. DaRosa Affidavit at para. 4.
 - (i) A true and accurate copy of the Affidavit of Armando DaRosa is found at Tab 38.
- d. "Tiny Tim" power capacitors were manufactured in New Bedford. Ronk Depo. II at 321-322 (Tab 152). Wayne Peterson testified that CDE experienced difficulties with the

"Tiny Tim" power capacitor. According to Mr. Peterson, there were "tab problems which created early failures. There were some impregnation problems because the facilities in which they were being impregnated were not adequate to do a thorough impregnation job." Peterson Depo. I at 132-133 (Tab 147).

- e. Joseph Sevigny (FPE New Bedford Marketing Manager) testified that he quit FPE because of the high number of failures FPE had been experiencing with Tiny Tim power capacitors. Sevigny Depo. at 95-99 (Tab 153). F. William Steele (FPE New Bedford Marketing Manager, later CDE New Bedford Marketing Manager) testified that FPE personnel played a role in settling customer complaints concerning Tiny Tim power capacitors. Steele Depo. I at 141 (Tab 154).
 - (i) A true and accurate copy of 10/17/68 Power Factor Meeting Minutes is found at Tab 74.
 - (ii) A true and accurate copy of Mr. Steele's memorandum to Mr. Jones is found at Tab 159.
- f. Joseph Sevigny (FPE New Bedford Marketing Manager) testified that when FPE equipment used to manufacture power capacitors in Newark, New Jersey was transferred up to New Bedford for use in the CDE plant there. This equipment produced contaminated, reject capacitors for almost a year after the transfer. Sevigny Depo. at 40-43, 138-140 (Tab 153).
- g. FPE considered the failure rate for power capacitors to be serious. While he was an FPE employee, F. William Steele authored a memorandum to Wayne Peterson (then CDE's Executive Vice President) in which Mr. Steele discussed the "serious" nature of the power capacitor failure.
 - (i) A true and accurate copy of Mr. Steele's memorandum is found at Tab 66.
- h. Distributors of "FPE/CDE" power (film) capacitors complained of their high failure rates. "It is imperative that your New Bedford plant understand the poor quality of their products produced in 1967 and 1968."

This letter was sent to Joe Sevigny (FPE New Bedford Marketing Manager) with a carbon copy to Tom Cole (then FPE's President and CDE Chairman of the Board), Phil Fairman (FPE Marketing), Harry Knudson (then FPE's Vice

President of Sales), Wayne Peterson (then general manager of the New Bedford plant), and W. Sullivan.

- (i) A true and accurate copy of a letter of complaint from Jake Rudisill Associates, Inc. is found at Tab 31.
 - (ii) A true and accurate copy of a second letter of complaint regarding poor power capacitor performance from Jake Rudisill Associates, Inc. sent to Harold Knudson, Federal Pacific Electric Company, Newark is found at Tab 31.
- i. At trial, Mr. Savoie, a plant engineer at the New Bedford plant, testified that CDE tested capacitors under a "black light." If, under the black light, certain capacitors gave off an abnormal color, those capacitors "would be put into a disposal area. The capacitors were automatically no good. There was no way of repairing them at that point." Partial Trial Transcript of Roland Savoie at 25-28 (Tab 160). In a sworn affidavit, Mr Savoie stated that he "knew of no attempts by CDE to repair leaking capacitors." Affidavit of Roland Savoie.
- (i) A true and accurate copy of the affidavit of Roland Savoie is found at Tab 40.
 - (ii) A true and accurate copy of the Partial Trial Transcript of Roland Savoie is found at Tab 160.

5. FPE Also Arranged for the Return of Reject Power Capacitors to the New Bedford Facility

- a. Joseph Seigny (FPE Marketing Manager in New Bedford from 1967 until 1969) described in his deposition the procedure by which customers would return reject capacitors. If a customer had a problem, Mr. Seigny's FPE marketing department would fill out a return material request form. The form authorized the return of reject capacitors. The form would be sent to a sales representative (also an FPE employee) who in turn would send the form to the customer's purchasing agent. The customer would then be authorized to return the reject capacitor to the New Bedford plant. Seigny Depo. at 120-123 (Tab 153). According to Mr. Seigny, FPE always asked for the return of the capacitor in order for the warranty to be honored. Seigny Depo. at 123 (Tab 153).
- b. F. William Steele was at various times New Bedford Marketing Manager for CDE and FPE. Steele Depo. I at 18-20, 33 (Tab 154). Mr. Steele testified that customers returned power

capacitors to New Bedford. These capacitors contained askarel oil when they arrived in New Bedford. Steele Depo. II at 210 (Tab 155).

- c. Charles Brino, who was at various times an accountant for CDE and FPE, testified that when customers would complain, a "return material request" would issue. With a return material request, customers were authorized to return defective products to the New Bedford plant, and the plant had the authority to accept those products. Brino Depo. VI at 69-70 (Tab 133).

6. Reject Power Capacitors Marked With FPE's Name Were Disposed of Off-Site, Including at Sullivan's Ledge

- a. Armando DaRosa, foreman of power capacitor manufacturing operations at the New Bedford facility, stated that reject power capacitors containing PCB oil were removed and disposed of off-site. Mr. DaRosa also recalls the name Federal Pacific Electric Company on capacitors manufactured at the New Bedford plant. DaRosa Affidavit at paras. 3 and 4.
 - (i) A true and accurate copy of the Affidavit of Armando DaRosa is found at Tab 38.
- b. In its admissions, CDE admitted that it did not drain PCBs from reject capacitors prior to disposal.
 - (i) A true and correct copy of CDE's Response to Plaintiffs' Request for Admission at Tab 80.
- c. In Plaintiffs' Exhibit 24 (1970 Monsanto Call Report prepared by witness Garrett Graham), CDE admitted that it had disposed of capacitors at Sullivan's Ledge "for years."
 - (i) A true and accurate copy of Plaintiffs' Exhibit 24 is found at Tab 34.
- d. Manuel Correia, a former maintenance employee at the New Bedford plant, testified at trial that power capacitors with the FPE logo were disposed of at Sullivan's Ledge. Partial Trial Transcript of Manuel Correia at 34 (Tab 42). He further testified that he took "a lot of the reject capacitors, powers, big ones, big ones and small ones" to Sullivan's Ledge. Partial Trial Transcript of Manual Correia at 37 (Tab 42).

7. Power Capacitor Manufacturing Operations Inherently and Routinely Generated Wastes Containing PCBs and Other Hazardous Substances That Were Disposed of Off-Site, Including at Sullivan's Ledge

- a. Armando DaRosa, foreman of the power capacitor manufacturing operations at the New Bedford plant, stated that both PCB contaminated Fuller's Earth and PCB oil were placed in waste drums and taken off-site for disposal. DaRosa Affidavit at para. 4.
 - (i) A true and accurate copy of the affidavit of Armando DaRosa is found at Tab 38.
- b. Manuel Correia, a former maintenance employee at the New Bedford plant, testified that in the early 1970s many drums of waste from the New Bedford facility were also disposed of at Sullivan's Ledge. Partial Trial Transcript of Manuel Correia at 42.
 - (i) A true and accurate copy of the Partial Trial Transcript of Manuel Correia is found at Tab 42.

FPE Exercised Pervasive Control Over CDE

I. FPE Acquired a Majority of the Stock of CDE

- A. Federal Pacific Electric, Inc., a Delaware corporation, purchased 99.6% of CDE's common stock during the period from 1959 through 1979, and owned a majority of CDE's stock throughout the period from 1960 through September, 1983. Admission II.A.1, No. 7 (Tab 162); FPE's Responses to Government's First Set of Interrogatories, No. 34 (Tab 92).
- B. Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, testified that during the 1960s, FPE's headquarters were located at 50 Paris Street in Newark, New Jersey. During that same period, CDE headquarters were located at that same address.¹⁹ Peterson Depo. I at 22 (Tab 147).

II. FPE Continually Referred to CDE as a Division of FPE

A. FPE Held CDE Out to the World as a Division of FPE

- 1. Wayne Peterson (CDE's Executive Vice President, later CDE's President) testified that the term "Cornell-Dubilier Electric Corporation, Division of Federal Pacific Electric" was used for the purpose of marketing products to the public. Peterson Depo. II at 44-45 (Tab 148).
- 2. Glenn Ronk (CDE's President) stated that "after it acquired CDE, FPE often referred to CDE as a 'division' of FPE. It was very important to Thomas Cole that the public hold the perception that FPE itself was in the electronics business. Therefore, FPE often described CDE as a "division" of FPE, in order to create the image of relating electronics with FPE." Ronk Affidavit at para. 8.
 - (a) A true and accurate copy of the affidavit of Glenn Ronk is found at Tab 41.

¹⁹ CDE was not charged rent for use of the property. Brino Depo. VI at 125-126 (Tab 133).

B. CDE Personnel Used FPE Stationary or Stationary that Bore the Letterhead "Cornell-Dubilier Electronics, Division of Federal Electric Company"

1. When Wayne Peterson was President of CDE, Mr. Peterson had an available supply of letterhead stationary which bore the name Cornell-Dubilier Electronics, Division of Federal Pacific Electric Company. Peterson Depo. II at 75. (Tab 148).
2. When F. William Steele was CDE's Marketing Manager at the New Bedford plant, Mr. Steele had an available supply of letterhead stationary which bore the name Federal Pacific Electric Company. Steele Depo. II at 249-250 (Tab 155). Mr. Steele also testified that Mr. Gracia, a CDE New Bedford employee, used FPE interoffice letterhead. Steele Depo. II at 249-251 (Tab 155).
3. George Alexander (CDE New Bedford) used "routing slips" marked with FPE's name to circulate documents pertaining to PCBs.
 - a. True and accurate copies of two of Mr. Alexander's routing slips and the accompanying documentation are found at Tab 90.
4. A selection of stationary bearing the letterhead "Cornell-Dubilier Electronics, Division of Federal Pacific Electric Company" is found at Tab 96.

C. CDE and FPE Personnel Referred to CDE as a Division of FPE

1. FPE switched from manufacturing Aroclor-impregnated capacitors to dry-type capacitors. In a letter dated February 9, 1972 from D.M. Blough (CDE) to Wayne Peterson (then CDE's Executive Vice President), Mr. Blough questioned the wisdom of FPE publicizing this accomplishment because it might reflect negatively on other divisions which continued to manufacture Aroclor-impregnated capacitors. Mr. Peterson testified that the "other divisions" Mr. Blough was referring to was CDE. Peterson Depo. II at 33-34 (Tab 148).
 - a. A true and accurate copy of Mr. Blough's letter to Mr. Peterson is found at Tab 60.
2. Charles Brino, who was at various times an accountant for FPE and CDE, testified that he commonly referred to Cornell-Dubilier Electronics as a division. Brino Depo. I at 121 (Tab 128). Mr. Brino also testified that CDE was one of the operational divisions of FPE. Brino VI at 16 (Tab 133).

3. Thomas Brosnahan, FPE's 30(b)(6) designee, testified that FPE's operations accounting department loosely used the word "division" to refer to CDE. Brosnahan Depo. III at 96-97 (Tab 136).

D. FPE's Annual Reports Referred to CDE as a Division of FPE

1. The 1960 FPE Annual Report refers to CDE as follows:

Acquisition of Cornell-Dubilier, one of the first and best known names in the electronics industry, highlighted the year's operations. It has been evident to your management that the electronics and the electromechanical equipment markets are growing ever closer together in terms of both product and application. Through its new Cornell-Dubilier Electronics Division, Federal Pacific is in a position to capitalize on this trend.

* * *

Federal Pacific -- A Major Force in Electronics

In the frontier-leaping technologies of the Space Age, Federal Pacific products play a vital part. Telemetry and television, rocketry and radar, automation and communication, mechanization and miniaturization, all seek the advanced products of the Cornell Dubilier Division: semi conductors, capacitors, filters, pulse networks, delay lines, relays, vibrators, antenna rotors, power supplies, instruments. (emphasis added).

- a. A true and accurate copy of the 1960 FPE Annual Report is found at Tab 117. See pages S0030 and S0059.
2. The 1962 FPE Annual Report refers to CDE as follows:

"The acquisition in 1960 of Cornell-Dubilier Electric Corporation, our Electronics Division, is proving to be of great significance. Reorganization of all facets of this business has been completed and operations are responding well to the treatment." (emphasis added).

 - a. A true and accurate copy of the 1962 FPE Annual Report is found at Tab 118. See page 2.
3. The 1963 FPE Annual Report refers to CDE as follows:

"The Cornell-Dubilier Electronics Division did not experience the projected sales increases for the year which previous historical data had indicated as a reasonable target." (emphasis added).

- a. A true and accurate copy of the 1963 FPE Annual Report is found at Tab 119. Please see page 2.
4. The 1965 FPE Annual Report refers to CDE as follows:

"The present growth in the manufacture and use of color television is creating an increased demand for many of the products of the Cornell-Dubilier Electronics Division." (emphasis added).

 - a. A true and accurate copy of the 1965 FPE Annual Report is found at Tab 120. Please see page 2.
5. The 1966 FPE Annual Report refers to CDE as follows:

"Cornell-Dubilier Electronics Division has met significant objectives in the past year. In addition to many new product developments and profit improvements, we are most pleased with our new management team which, we are confident, will carry this Division forward to new goals." (emphasis added).

 - a. A true and accurate copy of the 1966 FPE Annual Report is found at Tab 121. See page 2.
6. The 1967 FPE Annual Report refers to CDE as follows:

"The Electronics Division, Cornell-Dubilier, enjoyed its best year in sales and earnings since 1957."

"... as a result of greater efficiency and improved cost control, Division earnings rose 57% ... The Electronics Division began a major program of capital equipment installation to effect overall cost reductions through more efficient manufacturing techniques." (emphasis added).

 - a. A true and accurate copy of the 1967 FPE Annual Report is found at Tab 122. See page 4 and page 11 respectively.
7. The 1968 FPE Annual Report refers to CDE as follows:

"New high voltage capacitors developed by your Company's Electronics Division, Cornell-Dubilier, are being used increasingly by virtually every important manufacturer of electrostatic copying machines." (emphasis added).

 - a. A true and accurate copy of the 1968 FPE Annual Report is found at Tab 123. See page 13.

8. The 1969 FPE Annual Report refers to CDE as follows:

"The performance of our electronics division, Cornell-Dubilier, improved significantly in the last quarter, and the present business prospects of the division appear strong." (emphasis added).

- a. A true and accurate copy of the 1969 FPE Annual Report is found at Tab 124. See page 3.

9. The 1970 FPE Annual Report states as follows:

"Early in January the Company [FPE] reorganized its operating management into five product divisions; Circuit Protective Systems . . .; Low Voltage Distribution Equipment Systems . . .; Environmental Conditioning Systems . . .; Power Equipment Systems . . .; and Cornell-Dubilier (Electronic Components) which produces capacitors, rotors and other related electronic components. These organizational changes were designed to enable faster and more sensitive response to changing marketing conditions, provide a sharper focus on individual product areas and markets, place performance responsibility at a more appropriate management level, and develop general management and business competency."

- a. A true and accurate copy of the 1970 FPE Annual Report is found at Tab 125. See page 1.

E. The Phrase "Cornell-Dubilier Electronics Division, Federal Pacific Electric Company" Was a Formal CDE Trade Name

1. A resolution of the CDE Board of Directors, dated April 5, 1965, adopted the trade name "Cornell-Dubilier Electronics Division, Federal Pacific Electric Company."
 - a. A true and accurate copy of the 1965 Resolution of the CDE Board of Directors is found at Tab 75.
2. Charles Brino, who was at various times an accountant for CDE and FPE, testified that the term "Cornell-Dubilier Electronics Division" was "a trade name used in the business of CDE." Brino Depo. I at 103-104 (Tab 128).
3. FPE admits that the term "Cornell-Dubilier Electronics Division" was a trade name used in the operation of the business of CDE. FPE also admits that another trade name was "Cornell-Dubilier Electronics Division, Federal Pacific Electric Company."

- a. A true and accurate copy of FPE's Admission II.A.3, Nos. 135 and 136 is found at Tab 94.

III. CDE's Board of Directors Was a "Paper" Board

A. CDE Presidents, Who Were Also CDE Directors, Did Not Attend CDE Board of Directors Meetings

1. Glenn Ronk was President of CDE from 1965 until 1968 and a Director of CDE from 1966 until 1968.
Mr. Ronk testified that he did not know there was a CDE Board of Directors. Ronk Depo. I at 71-72 (Tab 151). Mr. Ronk did not know that minutes of CDE Board meetings existed. Ronk Depo. I at 73, 80-81 (Tab 151).

When asked by FPE's counsel, Ralph Albright, whether the CDE board ever gave him any directions, Mr. Ronk responded: "Nothing like any board I've ever served on. The answer's no." Ronk Depo. II at 403 (Tab 152). Mr. Ronk later added "this was not a normal board that I'm used to." Ronk Depo. II at 405 (Tab 152).

Q: Mr. Ronk, if you were to see photocopies, accurate and genuine photocopies, of the minutes of the board of directors of CDE, would those minutes refresh your recollection about, A, the existence of the meetings and, B, your attendance thereat?

A: What I was interested in is, to my knowledge, I didn't ever know there was a board of Cornell-Dubilier going on and there were minutes. I'm not questioning there were minutes. I just wanted to see what they looked like and who attended and who signed them. Ronk Depo. II at 199 (Tab 152).

Mr. Ronk stated he did not review any policies when he was officially a CDE director. Ronk Depo. I at 62 (Tab 151). No institutional changes at were ever made by any CDE "board." Ronk Depo. I at 67-68 (Tab 151).

2. In a sworn affidavit, Mr. Ronk described CDE's board as a "paper board," that never actually met. . . In reality, the CDE board of directors was never a policy making board. It never made any corporate decisions or instituted changes while I was employed at CDE." Ronk Affidavit at para. 10.

- a. A true and accurate copy of the affidavit of Glenn Ronk is found at Tab 41.

3. James Kaplan was President of CDE and served a Director of CDE from 1973 until (at least) the 1980s.

Mr. Kaplan stated that during the period he served on CDE's Board of Directors, he did not attend any formal board meetings. To Mr. Kaplan's knowledge, a CDE board member never voted on a matter that Mr. Kaplan understood to be presented to the Board of CDE. Kaplan Depo. II at 84 (Tab 141).

B. The President of CDE Did Not Report to the CDE Board of Directors

1. Mr. Ronk testified that while he was President of CDE, he did not report to the CDE Board of Directors. He stated "whatever those board minutes might say I don't know, I never reported to the Board of Cornell-Dubilier." When asked why that was so, Mr. Ronk responded "there was always a man I reported to . . . as president it was Tom Cole." Ronk Depo. I at 71 (Tab 151).

Mr. Ronk stated that when he was President of CDE, he recognized Mr. Cole as his superior "in the sense he was president of Federal Pacific Electric Company and they owned us. . . ." Ronk Depo. II at 352-353 (Tab 152).

C. CDE and FPE Had Numerous Overlapping Officers and Directors

1. During the period of FPE's ownership of CDE's stock, FPE by its own count had fourteen officers who were simultaneously officers of CDE. For example, FPE and CDE had the same Patent and General Counsel for 17 years, the same Treasurer for 11 years, the same Secretary for at least 16 years (3 persons), and the same Comptroller for 8 years.
 - a. A true and accurate copy of FPE's Supplemental Responses to Government's First Set of Interrogatories, No. 39 (Nov. 3, 1988) (Tab 93).
2. For many years, the President of FPE also served as the Chairman of the Board of CDE
 - a. A true and accurate copy of a list of all officers & directors of CDE & FPE (reflecting Edwin Jacobson's tenure as Chairman of CDE from 1970 through 1977) and Mr. Jacobson's tenure as president of FPE from 1970 through 1976) is found at Tab 127.

IV. FPE Performed CDE's Administrative and Financial Functions

A. FPE Personnel Were Responsible for CDE's Sales and Marketing

1. In 1970, the sales and marketing departments of FPE and CDE were merged by FPE personnel. An FPE inter-office memorandum dated August 13, 1970 from Harold Knudson (then FPE's Executive Vice President) advises Edwin Jacobson (FPE's President, CDE's Chairman of the Board) and others that effective August 14, 1970, "all advertising, sales promotions, merchandising, public relations and publicity will be centralized for all divisions of Federal Pacific and Cornell-Dubilier. . . ."
 - a. A true and accurate copy of Mr. Knudson's FPE interoffice memorandum to Mr. Jacobson and others is found at Tab 64.
2. On August 24, 1970, Thomas Brosnahan (FPE Employee, Accounting) sent an FPE inter-office memorandum to Ed Brino (FPE Employee, Accounting) regarding the consolidation of the FPE and CDE Advertising Departments.
 - a. A true and accurate copy of Mr. Brosnahan's memorandum is found at Tab 63.

B. FPE Personnel Were Responsible for CDE's Accounting Functions, Salaried Payroll, Credit and Collection Functions and Internal Auditing

1. Charles Brino, an FPE employee in 1960, performed auditing work for CDE, including audits of the New Bedford plant. Brino I at 18-20, 27-28 (Tab 128). Mr. Brino became a CDE employee in 1961, then was transferred back to the employ of FPE in 1970. From 1970 on, Mr. Brino continued to audit CDE's books as an FPE employee. Brino Depo. I at 36-37 (Tab 128). According to Mr. Brino, CDE's books and records were maintained by FPE employees. "Basically everybody was a Federal Pacific employee, even though they worked specifically on CDE's, you know, records or books." Brino Depo. I at 39 (Tab 128).
2. Thomas Brosnahan, an FPE employee who held the position of Director of Operations Accounting between 1970 and 1973, testified that he and his staff of 25 FPE employees performed accounting functions for CDE, including budgeting, operations accounting and cost accounting. Brosnahan Depo. I at 47-51 (Tab 134).

An FPE interoffice memorandum dated February 5, 1970 from Harold Young (Treasurer and Assistant Secretary for FPE and CDE) to Edwin Jacobson (FPE's President, CDE's Chairman of the Board) and the entire "D" distribution list further indicates that Mr. Brosnahan assumed responsibility for sales and statistics, profit plans, and systems and procedures.

- a. A true and accurate copy of Mr. Young's FPE interoffice memorandum to Mr. Jacobson and others is found at Tab 67.
3. Thomas Brosnahan, FPE's 30(b)(6) designee, testified that Michael Finger was responsible for administering credit policies and for collecting accounts receivable for CDE. Mr. Finger was an FPE employee. Brosnahan Depo. II at 186 (Tab 135); Brino Depo. I at 18 (Tab 128).
 - a. A true and accurate copy of Mr. Young's FPE interoffice memorandum to Mr. Jacobson and others is found at Tab 67.
4. On February 5, 1970, Harold Young (Treasurer and Assistant Secretary for FPE and CDE) sent an FPE interoffice memorandum to Edwin Jacobson and the entire "D" distribution list, advising of a finance division reorganization. This reorganization vested Kenneth Leach with responsibility for CDE's general accounting, salaried payroll, accounts receivable, internal auditing, and office services. Mr. Leach was an FPE employee. Brino Depo. I at 35-36 (Tab 128).
 - a. A true and accurate copy of Mr. Young's FPE interoffice memorandum to Mr. Jacobson and others is found at Tab 67.
5. Charles Brino, who at various times was an accountant for CDE and FPE, testified that the accounts receivable manager for FPE had responsibility for CDE's accounts receivable. Brino Depo. I at 98 (Tab 128).
6. On August 17, 1970, Ken Leach (FPE Employee, Accounting) sent a memorandum to Charles Brino (then CDE Accounting). The memorandum reads in art "Discussion at the "Finance Division" profit plan meeting on August 14the made it definitely clear that we are to proceed immediately with the absorption of the CDE Accounting Department into FPE's individual accounting departments."
 - a. A true and accurate copy of Mr. Leach's memorandum is found at Tab 104.

C. FPE Personnel Were Responsible for Administering CDE's Insurance and Employee Benefits

1. On February 5, 1970, Harold Young sent an FPE interoffice memorandum to Edwin Jacobson and the entire "D" distribution list, advising of a finance division reorganization. This reorganization vested Samuel Mundenar with responsibility for CDE's insurance and employee benefits. Mr. Mundenar was an FPE employee. Brino Depo. II at 57 (Tab 129); Brino Depo. VI at 63-64 (Tab 133).
 - a. A true and accurate copy of Mr. Young's FPE interoffice memorandum to Mr. Jacobson and others is found at Tab 67.
2. Workman's compensation for CDE was handled by FPE. Accident reports were prepared at the CDE plant level and submitted to an FPE department. Brino Depo. III at 55-56. (Tab 130).
3. From the early 1960s through the 1970s, Cornell-Dubilier was covered under FPE's casualty and property insurance policies. Brino Depo. IV at 51-52 (Tab 131).
 - a. True and accurate copies of relevant sections of FPE's 1966 and 1973 insurance policies are found at Tab 89. Note that the policy includes coverage for 1605 Rodney French Boulevard, CDE's New Bedford plant.
4. CDE's pension benefit program was administered by FPE personnel. Brino Depo. VI at 56 (Tab 133).

D. FPE Personnel Were Responsible for Providing Legal Services to CDE

1. FPE employees served as CDE's corporate counsel. Brino Depo. IV at 5-9 (Tab 131); Brino Depo. I at 89 (Tab 128); Brino Depo. II at 72 (Tab 129); Brosnahan Depo. II at 183-184 (Tab 135).
2. During the period at least from 1970 until 1983, CDE had no legal department, and FPE's legal department handled CDE's legal matters. Peterson Depo. II at 39 (Tab 148).
 - a. A true and accurate copy of FPE's Admission II.A.3., No. 1919 is found at Tab 94.
3. In a sworn affidavit, Glenn Ronk (CDE's President) stated that "CDE did not have their own legal counsel. When a legal problem would arise, CDE would consult the FPE legal department, the late Ed

Bierma, Esq., was the FPE corporate legal counsel and also a financial vice president of FPE." Affidavit of Glenn Ronk at para. 13.

a. A true and accurate copy of the affidavit of Glenn Ronk is found at Tab 41.

4. When CDE was sued, there was a practice between 1960 and 1983 of notifying FPE personnel (Paul Martin and Bernard Cheskin). Brino Depo. III at 62 (Tab 130).

5. There came a time in the 1970s when Monsanto, the manufacturer of the PCBs used by CDE in capacitors, required all of its customers to sign hold-harmless agreements. FPE's legal department advised CDE with respect to the legal ramifications of such an agreement, which CDE signed. Peterson Depo. II at 38-39 (Tab 148).

E. FPE Personnel Were Responsible for Processing and Disbursement of Payables

1. As manager of Treasury, Joe Rusignuolo was responsible for "writing checks to pay bills for CDE." Mr. Rusignuolo was an FPE employee. Brosnahan Depo. II at 185 (Tab 135); Brosnahan Depo. VI at 602 (Tab 139).

a. A true and accurate copy of Mr. Young's FPE interoffice memorandum to Mr. Jacobson and others is found at Tab 67.

2. FPE personnel processed invoices received by CDE's New Bedford plant. FPE personnel cut CDE checks for payment of such invoices. Brino II at 36-38 (Tab 129).

F. FPE Provided Computer and Data Processing Services to CDE

1. FPE's information services (computer) department provided services to CDE's New Bedford plant, including the processing of (a) CDE's salary payroll, (b) accounts payable checks for merchandise purchased by CDE, (c) invoices prepared by New Bedford for sales to customers, and (d) operating department reports. Brosnahan Depo. IV at 422 (Tab 137).

2. FPE controlled the main computer in Newark, New Jersey. FPE could review the computer system at the plant level. Brino Depo. III at 69-70 (Tab 130); Brino Depo. VI at 74-75 (Tab 133).

G. FPE Performed Routine Bookkeeping Services for CDE

1. Thomas Brosnahan, FPE's 30(b)(6) designee, testified that during the period 1970 to 1983, FPE performed routine bookkeeping services for CDE. Brosnahan Depo. VI at 601 (Tab 139).

H. FPE Processed Financial Data For CDE

1. Thomas Brosnahan, FPE 30(b)(6) designee, testified that FPE processed financial data, such as payrolls, journal entries, accounts payable, and invoices. Brosnahan Depo. VI at 601-603 (Tab 139).

I. FPE Personnel Were Responsible for Preparing CDE's Taxes

1. Charles Brino, who at various time was an accountant for CDE and FPE, testified that he was responsible for preparing CDE tax returns while he was a FPE employee. Brino Depo. II at 25-26 (Tab 129). After Mr. Brino stopped preparing CDE tax returns, another FPE employee, Joe Torella, continued to do so. Brino Depo. III at 102-103 (Tab 130).
2. On February 5, 1970, Harold Young sent an FPE interoffice memorandum to Edwin Jacobson and the entire "D" distribution list, advising of a finance division reorganization. This reorganization vested Kenneth Leach with responsibility for CDE's taxes. Mr. Leach was an FPE employee. Brino Depo. III at 101 (Tab 130).
 - a. A true and accurate copy of Mr. Young's FPE interoffice memorandum to Mr. Jacobson and others is found at Tab 67.
3. FPE and CDE submitted a consolidated federal tax return.
 - a. A true and accurate copy of an FPE/CDE consolidated federal tax return is found at Tab 86.
4. FPE's tax manager, Charles Wesley, provided tax advice to CDE. Mr. Wesley was an FPE employee. Brino Depo. III at 106 (Tab 130).
5. FPE personnel handled CDE's unemployment insurance tax returns. Brino Depo. IV at 86 (Tab 131).

J. FPE Dictated the Sums Charged to CDE for the Administrative and Financial Services Provided by FPE

1. Wayne Peterson stated that as CDE's chief operating officer, he did not negotiate the annual charge for services provided to CDE by FPE. "I

did not have the opportunity to negotiate. I was told what it would be." Peterson Depo. IV at 146 (Tab 150).

V. CDE Personnel Reported to FPE Personnel

A. CDE's Management Reported to FPE and FPE/CDE Personnel

1. Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, testified that he owed his duties and responsibilities to "FPE and the Chairman of the Board of CDE." Peterson Depo. IV at 79-80 (emphasis added) (Tab 150).

Q: . . . You occupied no position of employment as either an officer or an employee of Federal Pacific Electric Company on January 28, 1970, correct?

A: I was not an officer of FPE. I do not know when I was placed on the Federal Pacific payroll. I cannot answer the question.

Q: Why can't you answer the question?

A: I don't know who was paying me. I don't know whether I was an FPE employee or a CDE employee.

Q: All right, sir. To whom were your principal duties and responsibilities owed, Mr. Peterson?

A: To Edwin Jacobson.

Q: To what company, sir?

A: FPE and the Chairman of the Board of CDE.

(emphasis added).

2. During his deposition, Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, referred to "his tenure with FPE." Mr. Peterson was never an FPE employee, officer or director. When asked what he meant by this reference to FPE, he responded "I use that loosely. CDE for the period I was involved. The 15 years with CDE/Federal Pacific combination, related thereto." Peterson Depo. II at 40 (Tab 148).

3. Harold Knudson (FPE's Executive Vice President, later FPE's President) did not hold a formal title at CDE until 1978. See 1978 CDE officers and directors (Tab 127). Nevertheless, Mr. Knudson ran CDE. Wayne Peterson, who served as CDE's Executive Vice President, and later as CDE's President, testified that he "viewed [Mr. Knudson] as having the same authority over CDE that Jacobson had though he was not Chairman of the Board of CDE." Peterson Depo. IV at 175 (Tab 150).
4. Charles Brino, who at various times was an accountant for CDE and FPE, testified that Mr. Peterson reported to Harold Knudson (FPE's Executive Vice President, later FPE's President). Brino Depo. VI at 53-54 (Tab 133).
5. Nicholas Tangney (New Bedford Purchasing Agent (1959-1964)) testified that Frank Roby made monthly visits to the New Bedford plant. According to Mr. Tangney, every time Mr. Roby came up to New Bedford changes were instituted. Tangney Depo. at 120 (Tab 156). FPE's 30(b)(6) designee, Thomas Brosnahan, testified that "CDE employed a great deal of his [Mr. Roby's] services during the time 1960 to approximately 1965." Brosnahan Depo. VII at 39 (Tab 140).

From 1960 to 1963, Mr. Roby was an FPE director, an FPE officer, and a CDE director. Mr. Roby was not a CDE officer. Mr. Roby did not become a CDE officer until 1964.

- a. A true and accurate copy of the 1960, 1961, 1962, 1963 and 1964 officers and directors of FPE and CDE (as listed in the FPE and CDE Annual Reports for the years) is found at Tab 127.

B. CDE Management Was Paid by FPE

1. Wayne Peterson testified that sometime in the early 1970s, around the time he became CDE's chief operating officer, he began to receive paychecks from FPE -- and no longer from CDE. Peterson Depo. II at 41-42 (Tab 148).
2. Wayne Peterson testified that while he was chief operating officer of CDE, he was covered under an FPE pension. Peterson Depo. IV at 48-49 (Tab 150).
3. All of CDE's officers and managers were paid by FPE. Young Depo. I at 81-82 (Tab 157).

C. FPE Personnel Overruled Decisions Made by CDE Management

1. Nicholas Tangney (New Bedford Purchasing Agent (1959-1964)) testified that Mr. Fredericks (FPE employee) overruled decisions made by Haim Beyer, CDE's Vice President. Tangney Depo. at 66-67 (Tab 156).

D. Organizational Charts Show That CDE's President Reported to FPE's President

1. An FPE organization chart dated September 20, 1968 lists the President of CDE, Glenn Ronk, as reporting to FPE's President and the FPE Board of Directors.
 - a. A true and accurate copy of the FPE organization chart dated September 20, 1968 is found at Tab 32.
2. An organizational chart captioned in the lower right hand corner "Federal Pacific Electric Company" and dated March 1, 1967 shows "CDE -- G. Ronk" as reporting to FPE's President, Thomas Cole. Note that the other entities reporting to Thomas Cole include FPE Marketing and FPE-Pioneer Canada.
 - a. A true and accurate copy of the organization chart captioned "Federal Pacific Electric Company" and dated March 1, 1967 is found at Tab 33.

E. CDE Management Forwarded Important Letters to FPE and CDE/FPE Personnel For Review

1. Wayne Peterson testified that he forwarded important letters to Mr. Brosnahan (Director of FPE's Operations Accounting Department), Mr. Jacobson (FPE's President, CDE's Chairman of the Board), and Mr. Young (Treasurer and Assistant Secretary for FPE and CDE). Peterson Depo. III at 10 (Tab 149).

VI. FPE Exercised Control Over CDE by Substantially Restructuring CDE After Purchase in 1959

A. CDE Operations Were "Inter-Related" and Realigned

1. After acquiring CDE in 1959, FPE consolidated its control over CDE. The 1960 FPE Annual Report stated the following regarding FPE's acquisition of CDE:

"To obtain maximum benefit from the combination of companies [FPE and CDE], operations were quickly interrelated. In process, manufacturing operations have been regrouped to vacate less desirable [CDE] plants and fully utilize the more modern ones. The [CDE] marketing organization has been fully realigned and substantially augmented. Engineering has been strengthened greatly. Much better results are now being obtained and further improvements are expected in time. (emphasis added).

- a. A true and accurate copy of the 1960 FPE Annual Report is found at Tab 117. See pages S0030 and S0059.
2. Glenn Ronk was employed by CDE from 1959 until February 1970. Between 1965 and 1969, Mr. Ronk was President of CDE. In a sworn affidavit, Mr. Ronk stated:

"In 1959, FPE management took steps to improve CDE's performance. Mr. Cole gave Mr. Frank Roby the job of converting CDE, so that it would perform profitably and up to its potential. . . . When I joined CDE until Mr. Roby left FPE, Mr. Roby was the FPE official with primary responsibility for management of CDE. In this capacity, Mr. Roby reported directly to Mr. Cole, President and later Chairman of the executive committee of FPE. CDE had its own board of directors, made up primarily of FPE personnel, but this was maintained as a formality, and Mr. Roby reported directly to Mr. Cole."

According to Mr. Ronk, Mr. Roby's strategy was to shift CDE to a smaller number of long term products and to consolidate various CDE operations. For example, FPE decided to shut down Tobe Deutschmann Corporation, a subsidiary of CDE and to transfer its salvageable operations from CDE's Norwood plant to other CDE plants. FPE decided to install a research and development laboratory in the vacated Norwood facility. FPE decided to transfer Felix Weiss' CDE machine shop from Cambridge, Massachusetts to the Norwood facility. FPE ultimately decided to terminate CDE's Norwood operations. FPE directed that the lab and machine shop be moved to other facilities.

FPE terminated several unprofitable product lines at CDE and directed the development of new product lines. FPE ordered the consolidation of a number of operating facilities into a smaller number of modernized plants. FPE also supervised the complete reorganization of the sales and marketing functions at CDE. Ronk Affidavit at paras. 4-7.

- a. A true and accurate copy of the affidavit of Glenn Ronk is found at Tab 41.

3. A report entitled "Cornell-Dubilier Electronics" states "FPE obtained control of the CDE Board of Directors on July 17, 1959 . . . FPE management took immediate steps to streamline operations by (1) discontinuing [] loss operations which had no future; (2) reducing the number the number of operating points from 14 to 6 modern and well equipped plants; (3) consolidating the CDE and TOBE power factor correction capacitor businesses into one unit and transferring it to FPE facilities and management in Newark. . . ; and (4) regrouping products into logical and management at the six remaining plant locations."

In addition, CDE's corporate headquarters in South Plainfield, New Jersey was moved to Newark, New Jersey (FPE's corporate headquarters) for the express purpose of "better control."

- a. A true and accurate copy of the report entitled "Cornell-Dubilier Electronics" is found at Tab 1.
4. The 1959 CDE Annual report documents many of the changes made after CDE's acquisition by FPE, including but not limited to: (1) the sale of an unprofitable, Radiart automobile antenna business, (2) the transfer of operations out of Indianapolis, (3) the sale of CDE's Worcester plant, (4) the consolidation of Hope Valley and Providence plants, (5) the doubling CDE's Venice, California plant, and (6) the reorganization and augmentation of engineering.
 - a. A true and accurate copy of the 1959 CDE Annual Report is found at Tab 126.
5. A report entitled "Cornell-Dubilier Electric Corporation, Organization Study, New Bedford Plant" and dated October 1959 proposes that the following changes be made in the organization of the New Bedford plant: (1) creation of new production positions, (2) rearrangement of the plant, and (3) restructure of the engineering area and the winding department.
 - a. A true and accurate copy of the report entitled "Cornell-Dubilier Electric Corporation, Organization Study, New Bedford Plant" is found at Tab 76.

B. Long-Time CDE Employees Have Testified That During the Early 1960s FPE Completely Restructured Operations at the New Bedford Plant

1. Nicholas Tangney worked as a CDE employee for 33 years. Tangney Depo. at 198 (Tab 156). During that time, Mr. Tangney worked as a purchasing agent at the New Bedford plant between 1959 and late 1964.

Tangney Depo. at 53-54 (Tab 156). Mr. Tangney testified that "FPE had control of the plant . . . they were calling the shots there." Tangney Depo. at 156 (Tab 156).

2. Mr. Tangney testified that a Mr. Fredericks²⁰ took over manufacturing operations at CDE's New Bedford plant in approximately 1962 or 1963. According to Mr. Tangney, "every decision seemed to fall back on Fredericks to make the decision." Tangney Depo. at 66 (Tab 156). Curtis Lopes, CDE's 30(b)(6) designee, also has testified that "Mr. Fredericks came to CDE sometime after we were apparently acquired by Federal Pacific, and he came and ran the plant." Lopes Depo. II at 96 (Tab 145).

Mr. Fredericks was an FPE employee. FPE Response to Request for Admissions, No. 11 (Tab 91); Tangney Depo. at 56, 158 (Tab 156).

3. Mr. Tangney recalled changes at CDE after FPE took control over CDE. Tangney Depo. at 55 (Tab 156). "The whole setup changed considerably, all new, new engineers, new sales people, new manufacturing people and everything." Tangney Depo. at 57 (Tab 156). The following list sets forth some, but not all, of the changes that were made by FPE at the New Bedford plant:
 - a. Purchasing and Inventory. FPE changed CDE's purchasing and inventory systems. With orders over certain dollar amounts, Mr. Tangney (New Bedford purchasing agent) had to get approval from Mr. Fredericks, an FPE employee. Tangney Depo. at 61, 63-66 (Tab 156).
 - b. Sales. New sales engineers were hired. Tangney Depo. at 73-74 (Tab 156).
 - c. Scheduling. Tangney Depo. at 74 (Tab 156).
 - d. Subassembly and Winding. Tangney Depo. at 74-76 (Tab 156).
 - e. Press Department. Tangney Depo. at 75-76 (Tab 156).
 - f. Operating Systems. Tangney Depo. at 70 (Tab 156).
 - g. Engineering. New engineers were hired. Engineering specifications were changed by Mr. Fredericks. Tangney Depo. at 88-89 (Tab 156).

4. Mr. Tangney testified that "in Cornell-Dubilier, New Bedford (sic), and new people were coming in all the time, and people were being let go all the time." Tangney Depo. at 55-56 (Tab 156).
5. In a sworn affidavit, Roland Savoie (New Bedford Plant Engineer (1955-1980s)) stated that "FPE made radical changes at CDE's New Bedford plant, many of which involved cost cutting measures. For example, FPE eliminated certain departments at CDE, including departments which had been at CDE for years and were the backbone of the company. FPE required each department at CDE to come up with a certain cash flow. If a department failed to reach the required number the department was cut. Although FPE used up CDE's capital, it never put capital back in the company. Frank Robie came to New Bedford every two or three months. Whenever he came, he would make severe changes. C.W. Fredericks was Mr. Robie's right hand man. He continuously revised organizational charts for CDE and instructed CDE personnel to make changes. When his requests were not followed, the people who had failed to follow his instructions were demoted and eventually eliminated from the company."
 - a. A true and accurate copy of the affidavit of Roland Savoie is found at Tab 40.

VII. FPE Placed Restrictions on CDE's Capital Expenditures

- A. FPE Required The New Bedford Plant to Submit a "Request for Capital Expenditure" to FPE Officers and Directors for Approval of All Expenditures in Excess of \$500.
 1. FPE required CDE's annual capital budget to be approved by FPE personnel as a part of the annual profit plan process. Harold Knudson testified that, while he was FPE's Executive Vice President, CDE submitted all of CDE's capital requests in excess of \$500 to him for approval. Knudson Depo. I at 23-24 (Tab 142). CDE also had to submit requests for capital expenditures to the operations accounting department. Knudson Depo. II at 154 (Tab 143). The operations accounting department was an FPE department composed of FPE employees on the FPE payroll. Brosnahan Depo. I at 47-51 (Tab 134).
 2. Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, testified that all requests of CDE's for capital expenditures were submitted through an organizational chain that included the plant level, the CDE corporate level, the FPE Finance Department, and FPE's President. Peterson Depo. I at 67-69 (Tab 147).

3. Nicholas Tangney (New Bedford Purchasing Agent (1959-1964)) testified that he had to get Mr. Fredericks' approval before purchasing items over a fixed amount of money. Tangney Depo. at 64 (Tab 156). Mr. Fredericks was an FPE employee. FPE's Response to Request for Admissions, No. 11 (Tab 91).
4. Charles Brino, who at various time was an accountant for CDE and FPE, testified that CDE management had to obtain the approval of FPE management (Harold Knudson) before funds could be spent. Mr. Brino also recalled that CDE's chief executive officer needed FPE approval to spend over a certain fixed dollar amount. Brino Depo. VI at 76-78 (Tab 133).

B. FPE Denied Requests for Approval of Capital Expenditures Submitted by CDE

1. Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, testified that CDE's requests for approval of capital expenditures were approved "if the economic return was positive within 12 months. If it was significantly longer than that, it was not approved [by FPE]." Peterson Depo. I at 97 (Tab 147). According to Mr. Peterson, Mr. Knudson (FPE's Executive Vice President, later FPE's President) occasionally rejected [CDE's] requests. "There were some requests that were rejected [by FPE] because of the payout being excessive or the payout being questionable." Peterson Depo. I at 99 (Tab 147).

VIII. FPE Controlled CDE's Inventory

A. FPE Reviewed the Adequacy of CDE's Inventory Controls

1. Nicholas Tangney (New Bedford Purchasing Agent (1959-1964)) testified that FPE radically changed CDE's purchasing and inventory systems. Tangney Depo. at 61, 63-66 (Tab 156).
2. On June 23, 1970, Harold Young (Treasurer and Assistant Secretary of FPE and CDE) sent an FPE inter-office memorandum regarding inventories to "All Division Managers, All Plant Managers and All Plant Accountants." Wayne Peterson (then CDE's Executive Vice President) is named on the memo's distribution list as a Division Manager of Federal Pacific Electric. The memorandum advises that "management has decided that all inventory which became obsolete prior to July 1, 1969 . . . will be written off, **disposed of** and removed from our facilities." (emphasis added).

- a. A true and accurate copy of Mr. Young's FPE inter-office memorandum to Mr. Peterson is found at Tab 65.
3. On March 15, 1973, Thomas Brosnahan (FPE Employee, Accounting) sent an FPE inter-office memorandum to Wayne Peterson (then CDE's Executive Vice President) regarding "inventory targets for each plant in the CDE Division for the year 1973."
 - a. A true and accurate copy of Mr. Brosnahan's FPE inter-office memorandum to Mr. Peterson is found at Tab 48.
4. On August 29, 1973, FPE prepared an internal audit report after it reviewed the "CDE Power Division at New Bedford." The purpose of FPE review was to determine the adequacy of inventory controls throughout the production process and the adequacy of the Cost Accounting System in gathering, recording and reporting material cost information. The report included several pages of discussion of the "adequacy of scrap reporting and recording."
 - a. A true and accurate copy of the FPE Internal Audit Report is found at Tab 51.
5. Thomas Brosnahan, FPE's 30(b)(6) designee, testified that during the period 1960 to 1983, FPE/CDE personnel took steps to get CDE to manage inventories. Brosnahan Depo. III at 74-77 (Tab 136).

Mr. Brosnahan also testified that sometime in the early 1970s, Mr. Brosnahan had a practice of (a) periodically informing CDE's Presidents (Wayne Peterson, later James Kaplan) about CDE inventories as compared to forecasted plans, Brosnahan Depo. III at 86-87 (Tab 136); (b) analyzing inventories and monthly inventory statements for all locations; and (c) requesting that CDE's President (Wayne Peterson) prepare inventory forecasts. Brosnahan Depo. III at 90 (Tab 136). Mr. Brosnahan worked for FPE -- he was never a CDE employee.

- a. A true and accurate copy of Mr. Brosnahan's work history is found at Tab 161.

Mr. Brosnahan prepared monthly inventory statements for all locations. Brosnahan Depo. III at 90 (Tab 136). He also worked with Walter Beetsch, another FPE employee, to prepare annual physical inventory instructions. These instructions were then sent to both CDE and FPE managers, accountants and controllers. Brosnahan Depo. III at 88-89 (Tab 136).

6. On April 7, 1972, Thomas Brosnahan (FPE Employee, Accounting) sent an FPE inter-office memorandum to Wayne Peterson (then CDE's Executive Vice President) regarding adjustments that had been made to the New Bedford plant's inventory targets.
 - a. A true and accurate copy of Mr. Brosnahan's memorandum is found at Tab 58.
7. On September 15, 1971, Thomas Brosnahan (FPE Employee, Accounting) sent an FPE inter-office memorandum to H. Young (Treasurer and Assistant Secretary for FPE and CDE) regarding Division Physical Inventories, including the "Cornell Dubilier Division." Attached to the memorandum are various inventory charts. The chart marked in the lower right hand corner 525697 lists the physical and book inventory for power capacitors at the New Bedford plant.
 - a. True and accurate copies of Mr. Brosnahan's memorandum to Mr. Young and the accompanying inventory charts are found at Tab 61.
8. On May 7, 1974, Thomas Brosnahan (FPE Employee, Accounting) sent a memorandum to Wayne Peterson (then CDE's Executive Vice President) regarding inventories. The memorandum states in part "The prime interest rate has risen to 11%. With financing costs this high, it is requested that inventories be reduced to plan as soon as possible so that we may bring cash flow back in line with plan."
 - a. A true and accurate copy of Mr. Brosnahan's memorandum to Mr. Peterson is found at Tab 49.

IX. FPE Controlled the Prices Charged for the Products It Manufactured at the New Bedford Plant

- A. In 1973, FPE's Controller wrote to the Chairman of the Board of FPE regarding reviews of requests for price increases submitted by several businesses within the FPE group, including the "Cornell-Dubilier Electronics Division." Brino Depo. II at 58 (Tab 129).
 1. A true and accurate copy of FPE's Admission II.A.3, Nos. 236 and 237 is found at Tab 94.
 2. A true and accurate copy of Mr. Brosnahan's letter to Mr. Jacobson is found at Tab 105.

- B. Joseph Seigny, FPE's marketing manager, testified that FPE management set the prices charged for power capacitors manufactured at the New Bedford plant. Seigny Depo. at 63-64 (Tab 153).

X. FPE Controlled Employee-Related Matters at CDE

A. FPE Management Controlled Hiring and Firing by CDE

1. Thomas Brosnahan, FPE's 30(b)(6) designee, testified that in 1977, Wayne Peterson (then CDE's President) was required to submit requisitions for additions or replacements to the CDE work force to Harold Knudson. At that time, Mr. Knudson was FPE's President -- he was neither a CDE officer or director. Brosnahan Depo. III at 32-33 (Tab 136).
 - a. A true and accurate copy of a list of all 1977 FPE and CDE officers and directors (as listed in the 1977 FPE and CDE Annual Reports) is found at Tab 127.
2. Charles Brino, who was at various times an accountant for CDE and FPE, testified that CDE needed the approval of an FPE officer to hire a salaried employee, including a New Bedford plant manager. Brino Depo. V at 16-17 (Tab 132).

B. CDE Management Had to Obtain Approval From CDE/FPE Personnel to Raise Salaries

1. FPE controlled the levels of compensation that CDE could offer its employees. FPE maintained this control by means of "grade and monetary schedules." "Grades" at FPE/CDE referred to levels of employees reflecting the job content and the qualifications required of a person filling the position. "Monetary schedule" referred to the range of remuneration that a position within a grade was expected to carry. FPE would issue the grade and monetary schedules, which Harold Young would then transmit to CDE's plants for implementation. Peterson Depo. III at 24-25 (Tab 149).
2. Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, testified that he had to obtain the approval of FPE or FPE/CDE management (Mr. Knudson and Mr. Jacobson respectively) in order to raise salaries for managers who reported to him. Peterson Depo. III at 30 (Tab 149); Peterson Depo. IV at 13 (Tab 150). According to Mr. Peterson, "the CDE/FPE system [was]

very common within the manufacturing industry. . . ." Peterson Depo. III at 25-26 (Tab 149).

3. Attached to the agenda for the Federal Pacific Electric Board of Directors Meeting (dated March 13, 1969) is a list of salary approvals. This list indicates that the Federal Pacific Electric Company Corporate Operations Committee Meeting approved salary increases for 3 CDE employees and approved the hiring of another on October 29, 1968.
 - a. True and accurate copies of the FPE Board of Directors Agenda and the accompanying list of salary approvals is found at Tab 71.
4. As FPE's Executive Vice President and later as FPE's President, Harold Knudson was required to approve salary status notices wherein the salary of the employee would be in excess of \$20,000. Brosnahan Depo. V at 511-512 (Tab 138).
 - a. A true and accurate copy of FPE Corporate Practice Manual Bulletin 101.1 is found at Tabs 108 and 116. See page 2.
5. FPE established general job classifications and monetary wage levels for jobs at CDE. Brino Depo. I at 138, 140-142 (Tab 128). According to Mr. Brino, Harold Knudson (FPE's Executive Vice President, later FPE's President) had to approve any new hires or salary increases for salaried personnel at CDE. Brino Depo. VI at 106-108, 111 (Tab 133).
6. Monthly reports entitled "Federal Pacific Electric Company Hourly Average Labor Rate by Plant" included wage breakdowns for New Bedford, "Cornell Dubilier Elec. Division." These reports were distributed to FPE officers and directors who held no position at CDE. See, e.g., R. Noonan and H. Knudson, Jr and the 1971 officers and directors of CDE at Tab 127.
 - a. True and accurate copies of reports dated 1971 and entitled "Federal Pacific Electric Company Hourly Average Labor Rate by Plant" are found at Tab 83.

C. FPE Monitored the Number of Employees at Each of CDE's Plants

1. Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, testified that he recalled receiving memoranda from Harold Young (Treasurer and Assistant Secretary of CDE and

FPE) notifying him that certain CDE plants had an excessive number of salaried employees. Peterson Depo. III at 15 (Tab 149).

2. Charles Brino, who was at various times an accountant for CDE and FPE, testified that FPE prepared reports related to level of staffing at particular plants. These reports were sent to FPE personnel. Brino Depo. III at 59 (Tab 130).
3. FPE monitored the number of employees at the New Bedford plant on a department-by-department basis.
 - a. A true and accurate copy of chart entitled "Profit Plan Review -- No. of Employees Comparison" is found at Tab 84.

D. FPE Personnel Controlled CDE's Negotiations With Labor Unions

1. Charles Brino, who was at various time an accountant for CDE and FPE, testified that Tom Dolan, an FPE employee, handled industrial relations for FPE and CDE during the late 1960s and early 1970s. Brino Depo. VI at 80 (Tab 133).
2. Thomas Brosnahan, an FPE 30(b)(6) designee, testified that he did not disagree that the corporate industrial relations department had to negotiate all proposed hourly wage and employee benefit increases covered by collective bargaining agreements. Brosnahan Depo. III at 16-17 (Tab 136). The corporate industrial relations department was managed by Tom Dolan, who received a salary from FPE. Brosnahan Depo. III at 12-13 (Tab 136).
3. Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, testified that a proposed salary range for union employees was submitted either to Mr. Knudson (FPE's Executive Vice President, later FPE's President)²¹ or Mr. Jacobson (FPE's President and CDE's Chairman of the Board). Peterson Depo. III at 37-38 (Tab 149).

²¹ Mr. Knudson did not become a CDE officer and director until after Mr. Peterson left CDE. See 1977 and 1978 officers and directors of CDE (Tab 127); Brosnahan Depo. III at 75 (Tab 136).

E. Employee Benefit For CDE Employees Were Processed by the FPE Benefits Department

1. Charles Brino, who was at various times an accountant for CDE and FPE, testified that CDE employees sent their claims to the FPE benefits department for processing. Although at some point in time claims may have been sent directly to the insurer, Mr Brino believes they still may have been channeled first through the FPE benefits department. Brino Depo. I at 93 (Tab 128).
2. Mr. Brino testified that CDE and FPE employees received the same employee benefits in 1970. Brino Depo. I at 92 (Tab 128).
3. Patricia Dunn was supervisor of employee benefits. She was responsible for handling life insurance, medical and dental benefits, and pension and educational benefits for both FPE and CDE. Brino Depo. I at 113 (Tab 128).

F. FPE and CDE Personnel Shared Many of the Same Benefits

1. FPE and CDE personnel had many of the same benefits, including the same health benefits, the same life insurance carrier, and the same salaried vacation/leave policies. Brino Depo. IV at 74-76, 78 (Tab 131).

XI. FPE Corresponded With Government Agencies on CDE's Behalf

A. FPE Corresponded with the Employment Security Commission on CDE's Behalf

1. In December 1968, the Tax Manager of FPE (Charles Wesley) wrote the Chief Accountant of the Employment Security Commission in Raleigh, NC stating that effective January 1, 1969, there would no longer be a CDE payroll and that all personnel and services would have to be merged into FPE payrolls. Brino Depo. II at 119 (Tab 129).
 - a. A true and accurate copy of Mr. Wesley's letter is found at Tab 30.

B. FPE Corresponded with the Securities and Exchange Commission, the U.S. EPA, and Other Government Agencies on CDE's Behalf

1. Charles Brino, who was at various times an accountant for CDE and FPE, testified that FPE management contacted government agencies on CDE's behalf. Brino Depo. VI at 123-124 (Tab 133).

XII. FPE Used Profit Plans to Control CDE's Internal Policies and Procedures

A. Profit Plan Defined

1. During the tenures of both Mr. Peterson and Mr. Kaplan as Chief Operating Officers of CDE, CDE was required by FPE each year to submit "Profit Plans" to FPE for review, advice and approval. Peterson Depo. IV at 8 (Tab 150); Brino Depo. II at 99-103 (Tab 129); Brino Depo. IV at 44-45 (Tab 131). A profit plan was essentially a budget which CDE proposed, and which had to be approved by the President of FPE. Peterson Depo. III at 7 (Tab 149); Peterson Depo. IV at 8, 40-41 (Tab 150). Once a profit plan was approved, CDE was expected to operate under that plan in the coming year. The Profit Plan was a comprehensive and detailed document that FPE required to contain information on all of CDE's functions, including staffing levels of both salaried and non-salaried personnel, direct and indirect labor, projected inventories, projected sales and income. This information was provided on a per plant basis and as totals for CDE. Peterson Depo. II at 97-98 (Tab 148); Peterson Depo. III at 6 (Tab 149); Peterson Depo. IV at 156, 180-181 (Tab 150). CDE was controlled by the same burdensome "profit plan" procedures as FPE's true divisions. In response to cross-examination by FPE's counsel, Mr. Peterson testified that if he had not followed FPE's burdensome profit plan procedures, he would have been fired. Peterson Depo. IV at 158-59, 180-182 (Tab 150).

B. FPE Management Reviewed and Approved CDE Profit Plans

1. Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, testified that CDE profit plan proposals were submitted for review and approval by the President of Federal Pacific Electric Company. They were then submitted to Harold Young (Treasurer and Assistant Secretary of CDE and FPE). Peterson Depo. IV at 8-9 (Tab 150).

2. In his deposition, Mr. Peterson was referred to a page in a corporate policy manual pertaining to profit plans. Mr. Peterson stated "the procedure outlined here is one that I followed in developing the budget within CDE that I was willing to submit to FPE." Peterson Depo. IV at 154-155 (Tab 150).
3. Glenn Ronk (CDE's President) testified that while he was President of CDE, he had to submit a yearly budget to "somebody at Federal." When asked why the yearly budget went to Federal, Mr. Ronk responded that he was not an expert but he assumed that "they owned us and somehow they had to account for us. I don't know what they did." Ronk Depo. II at 227 (Tab 152).
4. Thomas Brosnahan, FPE's 30(b)(6) designee, testified that CDE's profit plan was presented to individuals who were paid a salary by FPE. Brosnahan Depo. I at 83-87 (Tab 134).
5. Charles Brino, who was at various times an accountant for CDE and FPE, testified that when the management at the New Bedford facility prepared a profit plan, it was reviewed by Wayne Peterson who, at the time, was Chief Operating Officer of CDE. Then, in turn, it was reviewed by Mr. Peterson's superior. According to Mr. Brino, in 1977, Mr. Peterson's superior was Harold Knudson. Brino Depo. II at 100-101 (Tab 129). The Annual Reports of CDE and FPE indicate that in fact, Mr. Knudson was not an officer or director of CDE in 1977. Mr. Knudson was President of FPE.
 - a. A true and accurate copy of a list of all 1977 CDE and FPE officers and directors (as listed in the 1977 CDE and FPE Annual Reports) is found at Tab 127.
6. Mr. Brino further testified that Glenn Ronk (CDE's President 1965-1969) submitted to his superiors at FPE for review. Brino VI at 43-44 (Tab 133).

C. FPE Established the Format For CDE Profit Plans

1. Charles Brino, who was at various times an accountant for CDE and FPE, testified that FPE established the format for CDE profit plans. FPE included instructions on how to complete profit plan reviews. Brino Depo. II at 102-103 (Tab 129).

D. CDE Profit Plans Were Subject to Change By FPE Management

1. Charles Brino, who was at various times an accountant for CDE and FPE, testified that during the 1970s, profit plans were subject to change

by Harold Knudson. Brino Depo. II at 102 (Tab 129). Mr. Knudson was not a CDE officer or director until 1978. See 1978 officers and directors of CDE (Tab 127); Brosnahan Depo. III at 75 (Tab 136)

E. During CDE's Annual Profit Plan Review, FPE Personnel Toured the New Bedford Plant

1. At least yearly, FPE managers visited FPE and CDE plants to hold profit plan reviews. Reviews would be arranged on a geographic basis, with FPE's managers visiting FPE and "CDE Division" Plants in the same geographic area on consecutive days.
 - a. A true and accurate copy of the "Revised Profit Plan Schedule" dated June 10, 1971 is found at Tab 81.
 - b. A true and accurate copy of Mr. Young's FPE inter-office memorandum entitled "Profit Plan Meetings -- 1973" is found at Tab 82.
2. During the years 1971-1979, Harold Knudson, who served as FPE's Executive Vice President and later as FPE's President, made tours of CDE's New Bedford plant during annual profit plan reviews. Knudson Depo. I at 45-46 (Tab 142); Peterson Depo. I at 126-128 (Tab 147). Mr. Knudson did not hold a position at CDE until 1978, when he became a CDE officer and director. Knudson Depo. I at 19-20 (Tab 142).
 - a. A true and accurate copy of an FPE inter-office memorandum dated June 10, 1971 and entitled "Profit Plan Meetings 1971/1972" is found at Tab 81.
 - b. A true and accurate copy of an FPE inter-office memorandum dated June 7, 1973 and entitled "Profit Plan Review -- New Bedford August 7" is found at Tab 47. Note that the memorandum states that motel reservations are to be made for Edwin Jacobson (FPE President, CDE Chairman of the Board), Harry Knudson (FPE Executive Vice President, later FPE's President), Thomas Brosnahan (FPE Employee, Accounting), and Harold Young (Treasurer and Assistant Secretary for FPE and CDE).

F. When the New Bedford Plant Varied from the Profit Plan, CDE's President Was Held Accountable to FPE and FPE/CDE Personnel

1. Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, testified that if a sales forecast for a specific

product line was not met, he would ask why, FPE's head of finance would ask why, Mr. Jacobson (President of FPE, CDE Chairman of the Board) would ask why, and Mr. Knudson (FPE's Executive Vice President, later FPE's President) would ask why. Peterson Depo. I at 104-105 (Tab 147).

2. On November 28, 1972, Mr. Peterson sent to a memorandum to D. Blough (CDE New Bedford) regarding the Power Capacitor 1973 Profit Plan Review. Among other things, Mr. Peterson asked Mr. Blough to recast a 1973 report in order to provide further substantiation for the proposed 1973 profit plan and to review forecasted profit levels. A carbon copy of this memorandum was provided to H. Young, H. Knudson, and T. Brosnahan. Mr. Knudson and Mr. Brosnahan were not CDE officers or directors. In 1972, Mr. Knudson was FPE's Executive Vice President and Mr. Brosnahan was Director of Operations Accounting for FPE and CDE. Knudson Depo. II at 115-116 (Tab 143); Brosnahan Depo. I at 47-49 (Tab 134). Neither held a title at CDE.
 - a. A true and accurate copy of Mr. Peterson's memorandum to Mr. Blough is found at Tab 50.
 - b. A true and accurate copy of a list of the 1972 officers and directors of CDE and FPE (as listed in the 1972 Annual Reports) is found at Tab 127.
3. On April 6, 1972, Howard Young (Treasurer and Assistant Secretary of FPE and CDE) sent a memorandum to Wayne Peterson (then CDE's Executive Vice President) regarding "an unfavorable variance of \$49,476 with respect to controllable costs." The memorandum concludes: "Kindly advise this office the reasons for being over budget and what corrective action will be taken to correct this over spending." Carbon copies of this memorandum went to E. Jacobson (FPE's President, CDE's Chairman of the Board) and Thomas Brosnahan (FPE Employee, Accounting).
 - a. A true and accurate copy of Mr. Young's memorandum is found at Tab 59.

XIII. FPE Used Practice Manuals to Control CDE's Internal Policies

A. Practice Manual Defined

FPE controlled CDE by standardizing all CDE corporate procedures and financial practices by way of "Practice Manuals."

1. A Finance Practice Manual contained financial practices and procedures. Brino Depo. I at 124 (Tab 128). Both CDE and FPE had Finance Practice Manuals.
2. A Corporate Practice Manual ("CPM") contained corporate practices and procedures. Brino Depo. IV at 97 (Tab 131). Both CDE and FPE had Corporate Practice Manuals.

CDE's financial and corporate practices and procedures, as expressed in the Practice Manuals, were virtually identical in form and substance to FPE's.

B. The Practices and Procedures Set Forth in FPE's Practice Manuals Applied to CDE

1. Charles Brino, who was at various times an accountant for CDE and FPE, testified that "CDE had its own manuals but, in essence, most of the policies were just a repeat of what was in the FPE manuals, though there may have been some specific policies unique to CDE, some unique to Federal, that didn't apply." Mr. Brino also testified that the origin of those policies was FPE and that those policies governed CDE. Brino Depo. VI at 56-58 (Tab 133); Brino Depo. I at 124 (Tab 128); Brino Depo. III at 10-11, 45 (Tab 130).

FOR EXAMPLE:

2. FPE and CDE CPM Bulletins 001.1, "Corporate Practice Manual - Description of System," are identical for both corporations, with the exception that designations of offices and units have been changed in the CDE bulletin. FPE and CDE CPM Bulletins 001.1 were approved by F.H. Roby, President of FPE.
 - a. True and accurate copies of FPE and CDE CPM Bulletins 001.1 are found at Tab 106.
3. As of March 1, 1965, CDE and FPE had identical records retention procedures and an identical Master Schedule for Retention of Records. CDE's records retention was controlled by FPE's Records Retention Committee, chaired by the Secretary-Treasurer of FPE, who had prime responsibility for the safekeeping of CDE's records.
 - a. True and accurate copies of FPE and CDE CPM Bulletins 009.9 and 9.9.1 to 009.9E are found at Tab 107.
4. FPE required all of its subsidiaries, including CDE, to use "Employee Status Notice" forms "for the accumulation of all personnel and payroll

data of employees from the time they are hired up to their termination or retirement."

- a. A true and accurate copy of FPE CPM Bulletin 101.1 is found at Tab 108. See page 1.

- 5. As of June 1, 1962, all salaried employees of CDE earning less than \$12,500 per year were included within a Salaried Employee Compensation Plan (identical to FPE's) unless FPE's Executive Vice-President approved an exception to the plan. CDE was required to submit its Salary Compensation Manual to FPE's Executive Vice-President for his approval.

FPE's Executive Vice-President was the Chairman of the Compensation Plan Administrative Committee, which was responsible for collecting, maintaining and auditing the administration of transactions falling within the scope of the approved Salary Compensation Manual.

FPE's Executive Vice-President had the power to issue a separate "Manual of Salaried Compensation" and to approve those employees who would receive salary control data.

- a. A true and accurate copy of CDE CPM Bulletin 104.1 is found at Tab 109. See pages 1 and 2.

- 6. No job evaluation within the Manual of Salaried Compensation for CDE could be changed without the prior approval of the Executive Vice-President of FPE.

- a. A true and accurate copy of CDE CPM Bulletin 104.2 is found at page 1. See page 1. Tab 110.

- 7. As of November 1, 1962, unless CDE received the approval of the Executive Vice-President of FPE for those employees remaining in the same salary grade and making less than \$12,500 per year, CDE was only permitted to increase their pay by one step at a time within the grade, and could increase the pay by only two steps in one year.

In addition, unless CDE received the approval of the Executive Vice-President of FPE, employees making less than \$12,500 could not receive promotions of more than three grades in one year. FPE had the power to conduct a yearly review of certain Grade and Monetary Schedules.

- a. A true and accurate copy of CDE CPM Bulletin 104.3 is found at Tab 111. See pages 1 and 3.

8. FPE and CDE had virtually identical policies relating to the termination of salaried employees. As of April 1, 1963, any variations from CDE's Termination Policy for Salaried Employees sought in individual cases had to be approved by FPE's Executive Vice-President.
 - a. True and accurate copies of FPE and CDE CPM Bulletins 104.4 are found at Tab 112.
9. As of April 1, 1963, in any instance where a CDE department was moved, a plant closed, "or other special conditions [were] encountered," the Executive Vice-President of FPE was to determine the applicable policy for each situation.
 - a. A true and accurate copy of CDE CPM Bulletin 104.4 is found at Tab 112. See page 2.
10. On or before January 23, 1976, FPE's Corporate Policy Committee approved a holiday plan for salaried employees, which covered FPE and CDE employees.
 - a. A true and accurate copy of FPE CPM Bulletin 107.2 is found at Tab 113.
11. FPE established an accident prevention program on January 9, 1964 for itself and all subsidiaries, under the "cognizance" of the Safety Training Officer at Newark, who was to establish its policies, achieve uniformity in report forms and procedures, and centralize records for the use of FPE's Insurance Manager.

CDE, in language copied almost verbatim from FPE's CPM Bulletin 109.7, established an accident prevention program on September 21, 1964. CDE's accident prevention program was to be under the "cognizance" of the Safety Training Officer at Newark, who was to establish its policies, achieve uniformity in report forms and procedures, and centralize records for the use of [FPE's] Insurance Manager at Newark.

 - a. True and accurate copies of FPE CPM Bulletin 109.7 and CDE CPM Bulletin 109.7 are found at Tab 114.
12. On June 7, 1976, the President of FPE decreed that "[n]o FPE/CDE location will sponsor any individual or team in any athletic events. Sponsorship is deemed to have been given if the Company receives any promotional or advertising benefit, whether direct or incidental, and regardless of how minor, including the use of the Company's name and/or label, and/or the Company makes a financial contribution to the

activity, in cash or otherwise, or permits use of any Company facilities for the promotion of or in connection with the activity."

- a. A true and accurate copy of FPE CPM Bulletin 110.0 is found at Tab 115.

XIV. CDE Received Large Loans From FPE

A. CDE Was Short on Cash

1. Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, testified that from time to time during his tenure as chief operating officer of CDE, CDE experienced cash flow difficulties. Peterson Depo. II at 118 (Tab 148).
2. Thomas Brosnahan, FPE's 30(b)(6) Designee, testified that during the period 1960 through 1983, CDE experienced cash flow difficulties. Brosnahan Depo. III at 84 (Tab 136).

B. CDE Borrowed Money From FPE

1. Wayne Peterson, who served as CDE's Executive Vice President and later as CDE's President, testified that, when CDE was short of cash, FPE was CDE's cash source. "We borrowed from them . . . it was the closest and nearest source of cash." Peterson Depo. II at 118 (Tab 148).

C. CDE Was in Debt to FPE

1. Charles Brino, who at various times was an accountant for CDE and FPE, testified that by the end of 1980, CDE was \$7 million in debt to FPE. Brino Depo. II at 91 (Tab 129).

D. FPE Controlled CDE's Borrowing

1. In a sworn affidavit, Glenn Ronk (CDE's President) stated that "CDE could not borrow funds from outside sources." Affidavit of Glenn Ronk at para. 14.
 - a. A true and accurate copy of the affidavit of Glenn Ronk is found at Tab 41.
2. In 1968, as a condition of a \$6 million loan FPE had received from certain insurance companies, FPE prohibited CDE from obtaining credit from any source other than FPE, agreed not to sell CDE's stock, prohibited CDE from any short term borrowings to purchase real

estate, equipment, or investments and restricted short term borrowings to working capital for inventory, accounts receivable, and "other current needs." Young Depo. II at 161-166 (Tab 158).

XV. FPE Exercised Control Over CDE's Environmental Matters

A. FPE Employees Were Involved in PCB and Other Waste Disposal Decisions at the New Bedford Plant

1. While working at CDE's New Bedford plant on the FPE payroll, F. William Steele had an afternoon meeting with Garrett Randall Graham, a Monsanto Fluid Specialist. Mr. Graham testified at trial that, as a Fluid Specialist, he was responsible for discussing the hazards of PCBs and the proper means of their disposal with Monsanto customers.
 - a. A true and accurate copy of Mr. Graham's Monsanto 10/6/70 call report is found at Tab 35.
2. While working at CDE's New Bedford plant on the FPE payroll, F. William Steele sent a letter to D. Sylvia (CDE New Bedford) dated July 16, 1970 regarding the disposal of contaminated aroclor.
 - a. A true and accurate copy of Mr. Steele's letter to Mr. Sylvia is found at Tab 24.

B. CDE Personnel Held Themselves Out to be FPE Representatives When Requesting Information from Third-Parties Regarding the Disposal of Hazardous Substances and, in Turn, Forwarded the Information They Received to FPE Officers and Directors

1. On March 1, 1972, F. William Steele (then CDE New Bedford Marketing Manager, formerly FPE New Bedford Marketing Manager) wrote to the Georgia Power Company regarding a new Monsanto capacitor dielectric called "1016." The letter states in part:
"Recognizing industry concern for protection and preservation of the environment, FPE/Cornell-Dubilier began using the new dielectric, MCS-1016, in our power capacitor production a of October 1971. All power capacitors produced by FPE/Cornell-Dubilier are now impregnated with grade MCS-1016 liquid dielectric." The letter's signature line reads: "Very truly yours, FEDERAL PACIFIC ELECTRIC COMPANY, F. William Steele, Jr., Marketing Manager, Power Capacitor Division."

- a. A true and accurate copy of Mr. Steele's letter is found at Tab 7.
2. On March 24, 1972, F. William Steele (then CDE New Bedford Marketing Manager, formerly FPE New Bedford Marketing Manager) sent a letter to Rollins-Purle, Inc. The letter reads in part "as a manufacturer of power capacitors in which polychlorinated biphenyls (askarel) are used as a liquid dielectric, we are most concerned regarding the proper disposal of failed or reject units. We would appreciate information pertaining to your askarel disposal facilities both for our own use and for transmittal to our customers." (emphasis added). The letter is signed **FEDERAL PACIFIC ELECTRIC COMPANY, F. William Steele, Jr., Marketing Manager, Power Capacitor Division.**
 - a. True and accurate copies of Mr. Steele's letter and the response of Rollins-Purle are found at Tab 2.
3. On May 1, 1972, after receiving a response from Rollins-Purle, Mr. Steele sent a follow-up letter to Rollins-Purle. In that letter, Mr. Steele asked whether Rollins-Purle had any additional locations where askarel may be disposed of. Again, Mr. Steele signed the letter **FEDERAL PACIFIC ELECTRIC COMPANY, F. William Steele, Marketing Manager, Power Capacitor Division.**
 - a. True and accurate copies of Mr. Steele's letter and the response of Rollins-Purle are found at Tab 3.
4. On March 24, 1972, F. William Steele (then CDE's New Bedford Marketing Manager, formerly FPE's New Bedford Marketing Manager) wrote to Chemtrol Pollution Services, Inc. regarding disposal of reject capacitors. The letter is a replica of the one sent to Rollins-Purle on the same day (see supra). The letter asks for information on types of waste that Chemtrol will accept. Once again, the letter is signed **FEDERAL PACIFIC ELECTRIC COMPANY, F. William Steele, Marketing Manager, Power Capacitor Division.** (emphasis added).
 - a. A true and accurate copy of Mr. Steele's letter is found at Tab 4.
5. On May 1, 1972, Mr. Steele sent a second letter to Chemtrol Pollution Services, asking for a response to his first letter. On May 4, 1972, Chemtrol sent a letter in response to Mr. Steele. The letter is addressed to **Federal Pacific Electric Company, 1605 Rodney French Boulevard, New Bedford, Mass., Attention Mr. F.W. Steele.** Attached to the letter is a price list of wastes that Chemtrol will accept for disposal.

- a. A true and accurate copy of Mr. Steele's letter and the response of Chemtrol Pollution is found at Tab 5.
6. On May 18, 1972, F. William Steele sent an FPE inter-office memorandum to Harold Knudson (then FPE's Executive Vice President) and others regarding information he had obtained from Chemtrol Pollution and Rollins-Purle about PCB waste disposal facilities. Mr. Knudson was not an officer or director of CDE in 1972. See 1972 officers and directors of CDE at Tab 127.
 - a. A true and accurate copy of Mr. Steele's memorandum is found at Tab 6.

C. FPE Officers and Directors Requested Information Regarding CDE's Environmental Matters

1. On July 31, 1972, Harold Knudson (then FPE's Executive Vice President) requested that Wayne Peterson (then CDE's Executive Vice President) and certain other FPE employees each prepare a report on "potential pollution problems" within their respective "divisions." At that time, Mr. Knudson held no position at CDE. Knudson Depo. I at 32, 35 (Tab 142).
 - a. A true and accurate copy of Mr. Knudson's memorandum entitled "Environmental Control" is found at Tab 56. Knudson Depo. I at 32-35 (Tab 142).
2. On August 2, 1972, Wayne Peterson (then CDE's President) asked three New Bedford personnel (Blough, Johnson & Underwood) to review operations and to provide him with the data that Mr. Knudson (FPE's Executive Vice President) had requested.
 - a. A true and accurate copy of Mr. Peterson's memorandum to CDE New Bedford personnel entitled "Environmental Control" is found at Tab 55.
3. On August 9, 1972, D. M. Blough responded by way of memorandum to Mr. Peterson's request. The attachment to this memorandum has never been located.
 - a. A true and accurate copy of Mr. Blough's memorandum to Mr. Peterson entitled "Environmental Control" is found at Tab 52.
4. On August 15, 1972, in response to Mr. Knudson's memorandum of July 31, 1972, Wayne Peterson (then CDE's Executive Vice President) provided Harold Knudson (then FPE's Executive Vice President) with a

"summary of CDE's estimated cost to effect suitable environmental control at our plants." The memorandum reads:

New Bedford has the most difficult task. The plant is located on the banks of a navigable river. We have, for many years, been using impregnating oils containing PCB in the manufacture of capacitors. Although stringent controls are in effect to minimize spillage and to return contaminated oils to the manufacturer for disposition, there is still the presence of PCB throughout the building and in the grounds surrounding the building.

- a. A true and accurate copy of Mr. Peterson's responsive memorandum entitled "Environmental Control" is found at Tab 13. Peterson Depo. I at 114-115 (Tab 147).

- 5. On February 8, 1972, N.W. Landis (FPE, Newark) sent an FPE inter-office memorandum to F. William Steele (then CDE's New Bedford Marketing Manager) regarding "Poly-Chlorinated Biphenyls." In the memorandum, Mr. Landis "suggested" that Mr. Steele bring FPE sales agents up to date on the New Bedford plant's use of a new Monsanto insulating liquid.
 - a. A true and accurate copy of Mr. Landis' memorandum to Mr. Steele is found at Tab 18.
- 6. On February 15, 1972, F. William Steele wrote to Bernard Cheskin (legal counsel for FPE and CDE), asking for Mr. Cheskin's to "bless" the publication of a letter to the FPE power factor sales force on PCBs. The memorandum states in part "because of the recent 'commotion' regarding the use of askarel, we believe it important to advise the FPE/PESD field sales personnel of the activities of the Cornell-Dubilier power capacitor division in this area."
 - a. A true and accurate copy of Mr. Steele's letter to Mr. Cheskin is found at Tab 19.
- 7. On March 2, 1972, F. William Steele wrote (on FPE stationary) to Harold Knudson (then FPE's Executive Vice President) and the FPE sales department regarding recent developments in polychlorinated biphenyls used to impregnate power capacitors. In his memorandum, Mr. Steele states "Askarel is used as an impregnant in all manufacturers' power capacitor products. As such, we wish to take this opportunity to advise you of FPE/Cornell-Dubilier's activities in this area." The memorandum goes on to describe the properties of

MCS-1016, a new capacitor grade liquid dielectric manufactured by Monsanto. "Recognizing industry concern for protection and preservation of the environment, **FPE/Cornell-Dubilier** began using the new dielectric, MCS-101, in our power capacitor production as of October 1971. All power capacitors produced by **FPE/Cornell-Dubilier** are now impregnated with grade MCS-1016 liquid dielectric." (emphasis added).

The memorandum cautions, however, that MCS-1016 contains PCBs and advises with respect to its proper disposal. "The Monsanto Company does have a program to dispose of used and/or contaminated askarel. In essence, the customer is requested to ship the liquid waste, at their (the customer's) expense, in 55 gallon drums, to the Monsanto Company . . . However, we request the customer contact Monsanto directly for details regarding this program prior to returning any waste materials. Please note, this disposal procedure pertains to liquid waste only; it does not apply to equipments or materials saturated with askarel.²² At present we are not aware of any equivalent program to dispose of impregnated materials." (emphasis added).

a. A true and accurate copy of Mr. Steele's memorandum to Mr. Knudson is found at Tab 21.

8. On March 15, 1972, F. William Steele (then CDE New Bedford Marketing Manager) sent a memorandum to Richard Noonan (FPE's Vice President) captioned "FPE Power Capacitors" and entitled "Power Capacitor Division - Confidential Status Report." Among other things, the memorandum announces that "effective October 1971, **FPE/Cornell Dubilier** began using a new liquid dielectric, Monsanto Industrial Chemicals Company Grade MCS-1016, in our power capacitors. The memorandum goes on to point out that because the new dielectric contains some non-biodegradable PCB's, "we do recommend our customers continue to take care in handling and disposal of waste liquid and failed or damaged capacitors." (emphasis added).

a. A true and accurate copy of Mr. Steele's memorandum to Mr. Noonan is found at Tab 15.

9. On January 15, 1976, Harold Knudson (then FPE's President) wrote to Wayne Peterson (then CDE's President) regarding Pyranol. The letter reads: "Attached is a copy of the General Electric Information Letter

²² As Garrett Randall Graham testified at trial on October 28, 1996, askarel, like aroclor, was a Monsanto trade name for PCBs.

MT-221 which covers Pyranol.²³ I would appreciate your views on this subject and also what you believe our position should be on power factor capacitors. Mr. Knudson did not become an officer or director of CDE until 1978. See 1978 officers and directors of CDE at Tab 127.

- a. A true and accurate copy of Mr. Knudson's memorandum is found at Tab 103.

D. CDE Personnel Provided to FPE Officers and Directors Information Regarding the Disposal of Hazardous Wastes and Environmental Problems at the New Bedford Plant

1. CDE Personnel prepared a detailed summary of ecological problems at the New Bedford Plant that was forwarded to FPE personnel. George Alexander (CDE New Bedford, Manager Industrial Relations) drafted a report dated June 21, 1971 entitled "Cornell-Dubilier Electronic Corp. New Bedford Plant -- Summary of Problems Related to Ecology." As its title indicates, the Alexander report outlines "the problem areas that require correction" at the New Bedford plant, including "disposal of liquid waste, disposal of solid waste, containment of liquid wastes . . . , and elimination of PCB vapors from the atmosphere." The report goes on to recommend disposal of wastes at a landfill.
 - a. Mr. Alexander's report was sent to Harold Knudson (then FPE's Executive Vice President) and later forwarded to John Nelson (the "industrial relations man" at FPE). Knudson Depo. I. at 40-41 (Tab 142).
 - b. A true and accurate copy of the Alexander report is found at Tab 22. Knudson Depo. I at 39-40 (Tab 142).
2. CDE personnel reported to FPE and FPE/CDE officers and directors regarding a visit made to Monsanto Industrial Chemicals Company ("Monsanto"). CDE personnel visited Monsanto on August 3, 1972. Four days later, on August 7, 1972, Wayne Peterson (then CDE Executive Vice President) sent a memorandum to Edwin Jacobson (FPE's President, CDE's Chairman of the Board) regarding PCBs. Carbon copies of this memorandum were sent to D. Blough, B. Cheskin, and R. Noonan. Mr. Noonan was never a CDE officer or director. Mr. Cheskin was an officer of both CDE and FPE.
 - a. A true and accurate copy of the memorandum entitled "Monsanto Industrial Chemicals Company Welcomes Cornell-

²³ Pyranol is a trade name for a PCB-containing dielectric fluid.

Dubilier Corporation, Division of Federal Pacific Electric" is found at Tab 53.

- b. A true and accurate copy of Mr. Peterson's memorandum to Mr. Jacobson is found at Tab 54.
 - c. A true and accurate copy of a list of all 1972 CDE and FPE officers and directors (as listed in the FPE and CDE 1972 Annual Report) is found at Tab 127.
3. An FPE inter-office memorandum dated May 18, 1972 from F. William Steele (then CDE New Bedford Marketing Manager) advises Harold Knudson (then FPE's Executive Vice President) and others of additional information regarding disposal facilities for PCBs.
- a. A true and accurate copy of Mr. Steele's memorandum to Mr. Knudson is found at Tab 14.
4. An FPE inter-office memorandum dated March 28, 1973 from F. William Steele (then CDE New Bedford Marketing Manager) advises Bernard Cheskin (counsel for FPE and CDE) and others regarding a recent procedure published by the National Electrical Manufacturers Association to ensure the proper handling and disposal of askarel (PCBs). Attached to the memorandum is a form with which the recipient may order a copy of the NEMA procedure.
- a. A true and accurate copy of Mr. Steele's memorandum to Mr. Cheskin is found at Tab 10.
5. On June 14, 1972, F. William Steele (then CDE New Bedford Marketing Manager) sent a memorandum to FPE's Regional Managers regarding PCBs. Attached to the memorandum is a Wall Street Journal article regarding the same subject.
- a. A true and accurate copy of Mr. Steele's memorandum is found at Tab 9.
6. Wayne Peterson (CDE's Executive Vice President, later CDE's President) discussed the subject of PCBs with Harold Knudson (FPE's Executive Vice President, later FPE's President). Peterson Depo. I at 116 (Tab 147).
7. Mr. Peterson stated that he "attempted to keep [his] superiors fully informed of what [he] perceived to be the intent of EPA and the potential cost as the restrictions continued to be issued and placed upon the plant." Peterson Depo. III at 46-47 (Tab 149). Mr. Peterson

considered his immediate superior to be "whomever was FPE president at the time." Peterson Depo. III at 46 (Tab 149).

8. Mr. Peterson testified that he apprised his superiors that a Liquid Waste Disposal Committee had been formed at the New Bedford plant. Peterson Depo. III at 84-85 (Tab 149). Mr. Peterson also briefed his superiors on "the objectives of the Committee" and "PCBs as I understood it at that point in time." Peterson Depo. III at 85 (Tab 149). As mentioned above, Mr. Peterson testified that he considered his immediate superior to be "whomever was FPE president at the time." Peterson Depo. III at 46 (Tab 149).
9. Minutes from two Liquid Waste Disposal Committee meetings held in New Bedford show that CDE personnel planned to discuss PCB-related disposal problems with FPE.
 - a. A true and accurate copy of the minutes of the 8/24/70 liquid waste disposal committee meeting is found at Tab 36.
 - b. A true and accurate copy of the minutes of the 9/21/70 liquid waste disposal committee meeting is found at Tab 37.
10. When CDE became a member of the Electronics Institute Association's PCB Committee, which was a trade group committee that was formed in response to the environmental concerns raised by PCBs, Mr. Peterson reported to his superiors on the activities of the Committee. Peterson Depo. III at 65-66 (Tab 149). As mentioned above, Mr. Peterson testified that he considered his immediate superior to be "whomever was FPE president at the time." Peterson Depo. III at 46 (Tab 149).
11. On November 3, 1970, Wayne Peterson (then CDE's Executive Vice President) sent an inter-office memorandum to Bernard Cheskin (counsel for FPE and CDE) regarding "ecology." Specifically, the memorandum asks for whether "we" should issue a warning to customers regarding the adverse effects of PCBs to the environment. "Please give me your recommendations on actions required from a legal standpoint." A carbon copy of the memorandum was sent to FPE and FPE/CDE personnel: E. Jacobson (FPE's President, CDE's Chairman of the Board), R. Noonan (FPE's Vice President) and D. Blough (CDE New Bedford).
 - a. A true and accurate copy of Mr. Peterson's memorandum is found at Tab 100.
12. On September 14, 1976, Phil Murray (CDE New Bedford) sent an interoffice memorandum to Harold Knudson (then FPE's President)

regarding a recent Standard Times article that discussed PCBs found in the Acushnet River in New Bedford. In 1976, Harold Knudson held no position at CDE. See 1976 officers and directors of CDE at Tab 101.

E. FPE Controlled Remedial Cleanup at the New Bedford Plant

1. In April 1977, R. Hurd (CDE New Bedford) submitted a "request for approval of capital expenditure" (RACE) for the cost of aroclor removal and reclamation equipment. As the "approvals" box in the lower right hand corner indicates, Harold Knudson (initials HK) approved the expenditure of \$5,800 for the purchase of this equipment. Mr. Knudson's initials appear in the "approvals" box labeled "President." In 1977, at the time this request was approved, Mr. Knudson was President of FPE and held no position at CDE.
 - a. A true and accurate copy of the request for approval of capital expenditure for aroclor removal and reclamation equipment is found at Tab 44.²⁴
 - b. Harold Knudson was President of FPE in 1976 and became a director of CDE in 1978. Knudson Depo. I at 16-17 (Tab 142).
2. On March 20, 1977, Philip Murray (CDE New Bedford) sent a memorandum to Wayne Peterson (then CDE President) entitled "New Bedford RACE Aroclor Removal & Reclamation Equipment." The memorandum states: "I discussed this item with Harry Knudson last Monday and got authorization to proceed with purchasing items prior to formal RACE approval." As mentioned just above, at no time in 1977 was Mr. Knudson an officer or director of CDE.
 - a. A true and accurate copy of Mr. Murray's letter to Mr. Peterson is found at Tab 43.
3. On July 27, 1976, the New Bedford plant requested approval of the purchase of a liquid waste treatment facility. In doing so, two alternative proposals were submitted, one for a facility costing \$2,000,000 and the other for a facility costing \$475,000. Wayne Peterson (then CDE's President) stated in his deposition that ultimately he denied the request but that he had discussed the request with "his

²⁴ Evidence of subsequent remedial measures is admissible if such evidence speaks to the issue of ownership and control, as is the case here. Fed. R. Evid. 407. From that standpoint, it is significant that FPE's President approved the cost of remedial work conducted in accordance with the Massachusetts Department of Environmental Quality Engineering.

immediate superior, whomever was Federal Pacific President at the time." Peterson Depo. III at 45-46 (Tab 149).

- a. A true and accurate copy of the request for approval of capital expenditure for the purchase of a liquid waste treatment facility is found at Tab 45.
4. On May 18, 1977, the CDE New Bedford "Division" requested approval to renovate the plant's shield room. According to the RACE, renovations were necessary because "the screen room filters located at the top of the shield room are defective (sic) in that they do not meet their original performance specifications, and are leaking P.C.B." As the "approvals" box in the lower right hand corner indicates, Harold Knudson (initials HK) approved the expenditure of \$11,148 for the renovation. Again, Mr. Knudson's initials appear in the "approvals" box labeled "President." As shown above, in 1977, at the time this request was approved, Mr. Knudson was President of FPE and held no position at CDE.
 - a. A true and accurate copy of the request for approval of capital expenditure for renovation of the shield room is found at Tab 46.
5. On June 12, 1973, Wayne Peterson (then CDE's Executive Vice President) submitted a request for approval of capital expenditure (RACE) for the upgrade of a non-PCB impregnating system to Thomas Brosnahan (FPE's Director of Operations Accounting). The accompanying memorandum states: "Please audit the proposed expenditure."
 - a. True and accurate copies of the RACE and the accompany memorandum of Mr. Peterson are found at Tab 102.
6. On July 17, 1973, Wayne Peterson (then CDE's Executive Vice President) sent a memorandum to Edwin Jacobson (FPE's President, CDE's Chairman of the Board) regarding approval of a RACE in order to upgrade non-PCB impregnating tanks at the New Bedford plant. It appears that in every case, review of a RACE submitted by the New Bedford plant was conducted either by an FPE officer, director or employee.
 - a. A true and accurate copy of this memorandum is found at Tab 98.
7. On December 12, 1973, Wayne Peterson (then CDE's Executive Vice President) sent a memorandum to Edwin Jacobson (FPE's President, CDE's Chairman of the Board), requesting quality control equipment

for power capacitor operations at the New Bedford plant. A carbon copy of the memorandum was sent to Richard Noonan, Vice President of FPE.

- a. A true and accurate copy of Mr. Peterson's memorandum is found at Tab 99.

THE SULLIVAN'S LEDGE GROUP

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DATED: November 4, 1996

CERTIFICATE OF SERVICE

I CERTIFY THAT I SENT A COPY OF
THE INSTANT AFFIDAVIT TO COUNSEL
OF RECORD

DELIVERY ON



11/4/96

PHOEBE S. GALLAGHER

W/Boel.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ACUSHNET COMPANY, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 93-11219-REK
)	
COATERS, INC., <u>et al.</u> ,)	
)	
Defendants,)	

SULLIVAN'S LEDGE GROUP'S SUPPLEMENTAL PROFFER OF EVIDENCE
REGARDING LIABILITY OF DEFENDANT
FEDERAL PACIFIC ELECTRIC COMPANY

The Sullivan's Ledge Group plaintiffs¹ submit the following supplemental proffer of evidence in order to establish the liability of defendant Federal Pacific Electric Company ("FPE") under section 107(a)(3) of CERCLA² for costs incurred by the Sullivan's Ledge Group in connection with the clean-up of the Sullivan's Ledge Superfund Site ("Sullivan's Ledge"). For the convenience of the Court, we have quoted in boldface the headings from the original proffer to indicate precisely where in the original proffer plaintiffs' supplemental evidence should be inserted. We have also indicated the page number of the original proffer where the supplemental evidence should be added:

I. FPE and CDE Were Engaged in a Joint Venture to Manufacture and Sell Power Capacitors...

¹ The Sullivan's Ledge Group includes plaintiffs Acushnet Company, Amtel, Inc., United Dominion Industries, AVX Corporation, Berkshire Hathaway, Inc., Bridgestone/Firestone, Inc., Chamberlain Manufacturing Corporation, Commonwealth Electric Company, Commonwealth Gas Company, Emhart Industries, Inc., The Goodyear Tire & Rubber Company, Paramount Communications, Inc. and Teledyne Rodney Metals, a Division of Teledyne Industries, Inc.

² Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

J. FPE and CDE Arranged for the Disposal of Waste Containing PCBs and Other Hazardous Substances, Including PCB-Impregnated Reject Power Capacitors, at Sullivan's Ledge...

2. Power Capacitors Manufactured at the New Bedford Plant Contained PCBs³...

Add at
Page 19:

- f. Joseph Sevigny, FPE's New Bedford Marketing Manager for power capacitors, testified that during the years he worked at CDE's New Bedford plant, all power factor capacitors manufactured in New Bedford were impregnated with PCB oil. Sevigny Depo. at 124 (Tab 163).
- g. Between the mid-1950s and the early 1980s, Roland Savoie worked at CDE's New Bedford plant as a machine shop draftsman and tool designer. Savoie Tr. at 9-10 (Tab 164). While he was employed at CDE, the New Bedford plant impregnated capacitors with oils containing PCBs. Savoie Tr. at 22-23 (Tab 164). PCBs were considered useful fire retardants. Savoie Tr. at 23 (Tab 164). At some point, the New Bedford plant began to manufacture power capacitors for the utility industry. These capacitors were large in size. Mr. Savoie described power capacitors as "oh-my-God-size as compared to the little inky-dinky everyday capacitor." According to Mr. Savoie, power capacitors could reach up to three feet in height. Large quantities of oil were needed to impregnate power capacitors. Savoie Tr. at 29-30 (Tab 164)...

3. The Generation of Wastes Containing PCBs and Other Hazardous Substances Was Inherent in the Manufacture of Power Capacitors⁴...

Add at
Page 21:

- i. Fuller's Earth was used as a filter to absorb dirty oil from the impregnation tanks. Savoie Tr. at 31-32 (Tab 164). Contaminated Fuller's Earth would be removed the tanks and "dumped out," and new Fuller's Earth would be added. Fuller's Earth would change color from light to dark as it was used. Savoie Tr. at 32 (Tab 164). Fuller's Earth was also used as an oil absorbent for spills and drips around the impregnation tanks. Savoie Tr. at 33-34 (Tab 164).

³ Turn to page 19 of the Sullivan's Ledge Group's original proffer.

⁴ Turn to pages 20 and 21 of the Sullivan's Ledge Group's original proffer.

j. On January 20, 1971, George Alexander -- an employee at the New Bedford plant -- wrote to Garrett Randall Graham, a Monsanto Fluids Specialist, regarding wastes generated by all manufacturing operations at the New Bedford plant:

- Aroclor usage yearly is approximately 1,745,000 lbs.
- Liquid waste yearly is approximately 112,500 lbs.
- Rubbish waste yearly (including Spedi Dri, rags, Fuller's Earth, Sludge) is approximately 38,600 lbs.
- Rejected units yearly is approximately 464,400 lbs. See Mr. Alexander's letter to Mr. Graham (Tab 165).

Notes attached to the Alexander letter indicate that of the 112,000 pounds of liquid waste, 108,000 pounds were AC related.

k. In February 1971, Garrett Randall Graham, a Fluids Specialist for Monsanto, toured CDE's New Bedford plant. Mr. Graham was responsible for inspecting the plants of Monsanto customers, advising about the hazards of improper disposal of PCBs, and working with customers to eliminate PCB contamination.⁵ At trial, Mr. Graham described the impregnation area at CDE's New Bedford plant as a filthy, dirty "dungeon." The area was dark and damp, and housekeeping was poor. Instead of fixing pipes which leaked PCBs, CDE placed Fuller's Earth on the floor to catch spills. According to Mr. Graham, CDE used Fuller's Earth "as a crutch." As Mr. Graham was walking through the impregnation area, his foot fell through a floor board and was immersed in a liquid substance which had the sweet odor of PCBs. After his visit, Mr. Graham drafted a call report in which he stated that the New Bedford plant had one of the most severe PCB pollution problems in the industry. See Monsanto Call Report (Tab 34).

l. In the late 1960s, all power capacitors were manufactured in the basement-impregnation area (the area which Mr. Graham described at trial). In approximately 1970, manufacturing operations for high voltage power capacitors were moved to the annex (or the "shed"). Low voltage power capacitors continued

⁵ A trial transcript of Mr. Graham's testimony has not yet been made available to the Sullivan's Ledge Group.

to be manufactured in the basement-impregnation area of the main building. Peterson Depo. I at 79-86 (Tab 166)...

6. Reject Power Capacitors Marked with FPE's Name Were Disposed Off-Site, Including at Sullivan's Ledge...

Add at
Page 24:

- e. Manuel Correira testified that he was employed as a maintenance worker at Cornell-Dubilier's New Bedford Plant from 1967 until approximately 1972. Correira Tr. at 18-19 (Tab 167). In 1971, Mr. Correira first got involved in waste disposal at the Plant. Correira Tr. at 19 (Tab 167).

Mr. Correira recalled that many large capacitors were stored in and around the annex building. "They looked taller than I am, and I am five four. They were pretty large ones." These capacitors were known to Mr. Correira as "powers." According to Mr. Correira, many of the capacitors that were stored in and around the annex building were damaged and leaking. Correira Tr. 23-24 (Tab 167).

Reject capacitors and leaking drums of liquid waste were also stored in the yard of CDE's New Bedford plant. Correira Tr. 22, 28 (Tab 167).

Mr. Correira testified at trial that he and another man loaded a flatbed truck full of capacitors from the annex and the yard and took them to Sullivan's Ledge for disposal. Correira Tr. at 18-38 (Tab 167).

According to Mr. Correira, Sullivan's Ledge was the most convenient place to dispose of capacitors. We "took a lot of reject capacitors, powers, big ones and small ones. We took them to Sullivan's Ledge. It was easy to dump them at Sullivan's Ledge . . . We took anything that we could take to the Ledge. We took it out of the sheds; we took it out of the yard; we took it out of the basements. One basement was loaded with rejects, big rejects, big ones that we needed -- it was a special hand truck to get them out because two of us, three of us couldn't pick them up. And there was times that we brought that all to Sullivan's Ledge. The capacitors, it was the easiest place to dispose of the capacitors because they went sliding off the truck easily. The truck was saturated enough to make it like being on roller skates." Correira Tr. 37-38 (Tab 167).

When the capacitors slid off the truck, they fell "perfectly right into the Ledge. You could hear them banging down there. . . . They had to break open, because . . . some [had] broken open just by banging them around on the truck." Correia Tr. at 34 (Tab 167).

According to Mr. Correia, capacitors which bore the name "FPE" were disposed of at Sullivan's Ledge. Correia Tr. at 34-35 (Tab 167)...

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II. From The Time FPE First Owned The Stock Of CDE Until The Sullivan's Ledge Site Closed (1959-1973), CDE Routinely Generated And Disposed Of Waste Containing Hazardous Substances At Sullivan's Ledge.

A. CDE Routinely Generated a Number of Waste Streams Containing Hazardous Substances, Including PCBs, Trichlorethylene, Trichlorobenzene, Acetone, Toluene, Methyl Ethyl Ketone, and Toluene.

1. CDE's 30(b)(6) witness, Curtis Lopes, testified on behalf of the company about CDE's New Bedford operations. Mr. Lopes first began working at CDE in 1950. Lopes Depo. at 10 (Tab 179).
2. Mr. Lopes testified that in the 1960s Fuller's earth was used to soak up spills and leaks of trichlorethylene and that the Fuller's earth was then put into drums for disposal. Mr. Lopes testified that shipping and receiving removed those drums. Lopes Depo. at 42-43 (Tab 179).
3. Mr. Lopes testified that spent trichlorethylene was put into drums and picked up by shipping and receiving. Lopes Depo. at 62 (Tab 179).
4. Mr. Lopes testified that Fuller's earth was used to filter PCB Aroclor and that the Fuller's earth was periodically replaced. The Fuller's earth that was replaced was contaminated with PCBs and put into drums for disposal. Shipping and receiving took away the drums. Lopes Depo. at 81-82 (Tab 179).
5. Mr. Lopes testified that PCB Aroclor was filtered from a "dirty tank" to a "clean tank." Periodically, the material in the dirty tank was cleaned out and put into waste

drums for disposal. Shipping and receiving picked up the waste drums. Lopes Depo. at 79-80, 82 (Tab 179).

6. Mr. Lopes testified that there were periodic leaks and spills of PCB Aroclor and that Fuller's earth was used to soak them up. The Fuller's earth was then thrown in waste drums and the waste drums were picked up by shipping and receiving. Lopes Depo. at 83 (Tab 179).
7. Mr. Lopes testified that there were leaks from the pumps that pumped PCB impregnants and that drip pans were under the pumps. The drip pans were periodically emptied into waste drums and the waste drums were picked up by shipping and receiving. Lopes Depo. at 84 (Tab 179).
8. Mr. Lopes testified that of the 120 impregnation tanks at the New Bedford facility, 60-70 percent of them were dedicated to PCB impregnation. Mr. Lopes further testified that "in the early 50s and 60s, the shipping and receiving handled mostly the disposal and whatnot of impregnants." Lopes Depo. at 73-74 (Tab 179).
9. Mr. Lopes testified that prior to making changes to welded piping in the late 1960s, leaks from the pipes leading from the impregnant storage tanks to the impregnation tanks themselves were soaked up with Fuller's earth and placed into waste disposal barrels to be disposed of. Lopes Depo. at 86-88 (Tab 179).
10. Mr. Lopes testified that PCB imprenants in drip pans were normally barreled for disposal. Lopes Depo. at 92 (Tab 179).
11. Mr. Lopes testified that in the 1960s trichlorobenzene was mixed with impregnants, including PCB Aroclor 1242 and 1254. Lopes Depo. at 96 (Tab 179).
12. Mr. Lopes confirmed that during the 1950s and 1960s leaks and spills of PCB dielectric were soaked up by Fuller's earth, put into waste drums, and picked up by shipping and receiving for offsite disposal. Lopes Depo. at 98-9 (Tab 179).
13. Mr. Lopes testfied that trichlorethylene that was used to degrease impregnation tanks was put into disposal drums

and shipping and receiving picked up the drums. Lopes Depo. at 101 (Tab 179).

14. Mr. Lopes testified that still residue from degreasers used to degrease capacitors and drip pans was put into drums for waste disposal and that the still residue contained PCBs. In addition, leaks and spills of trichlorethylene from post-impregnation degreasing were also soaked up with Fuller's earth as a "standard practice" and put into waste drums. Lopes Depo. at 104-105 (Tab 179).
15. Mr. Lopes testified that AC capacitors were the chief product at the New Bedford facility in the 1960s, 1970s and 1980s and that 90 percent of the capacitors produced in the 1960s contained PCB dielectric fluid. Lopes Depo. at 19, 22 (Tab 179).
16. Mr. Lopes testified that "as far as AC units were concerned" the wastes were PCBs. Lopes Depo. at 106 (Tab 179).
17. Mr. Lopes testified that capacitors that failed testing were rejected, including capacitors that contained PCB dielectrics. Rejected capacitors were put into drums and picked up by shipping and receiving for disposal. Lopes Depo. at 108-109 (Tab 179).
18. Mr. Lopes testified that in the 1950s and 1960s used thinner and paint were placed into drums for disposal and picked up by shipping and receiving. Lopes Depo. at 110-111 (Tab 179).
19. Mr. Lopes testified that toluene, methyl ethyl ketone and xylene were contained in paint and thinner waste. (Tab 179).
20. Mr. Lopes testified that power factor capacitors began to be manufactured at the New Bedford facility in the mid to late 1960s and that these capacitors were impregnated in the main building and in Annex 3. Lopes Depo. at 134. The filtering that took place for power capacitors in section 3 was similar to the filtering that took place elsewhere in the facility. Fuller's earth was used as the filter material and, once it was contaminated and had to be replaced, it was thrown into waste drums for disposal.

It was then picked up by shipping and receiving. Lopes Depo. at 137-138 (Tab 179).

21. PCB dielectric drip pan material in section 3 of the Annex was thrown into waste drums for disposal. Lopes Depo. at 143 (Tab 179).
22. Dirt in the bottom of degreasers used to degrease power capacitors would be contaminated with trichlorethylene and PCBs. This dirt was cleaned out from the degreasers and put into drums for disposal. The drums were picked up by shipping and receiving. Lopes Depo. at 143-144 (Tab 179).
23. Mr. Lopes testified that rags that were used with acetone to wipe off capacitors were thrown into trash barrels for disposal and those barrels were picked up by shipping and receiving. Lopes Depo. at 158 (Tab 179).
24. Mr. Lopes testified that waste ethanol was discarded in waste barrels. Lopes Depo. at 159 (Tab 179).

B. CDE's Shipping And Receiving Personnel And CDE Trucks Routinely Used Sullivan's Ledge For The Disposal Of CDE Waste In The 1960s And 1970s

1. Curtis Lopes testified that from 1950 into the 1970s shipping and receiving handled all waste disposal at the New Bedford facility and that Henry Sylvia, Red Lyman, and Joe Costa were CDE employees in shipping and receiving. Lopes Depo. at 29-30, 44 (Tab 179).
2. Mr. Lopes also testified that CDE had a stake body truck that was used for disposal of materials. Lopes Depo. at 119 (Tab 179).
3. John Burgo drove a truck to Sullivan's Ledge three to four times a week during the 1950s and 1960s. Burgo Tr. at 102-104 (Tab 169). Mr. Burgo testified at trial that he saw Cornell-Dubilier's truck disposing of waste at Sullivan's Ledge "many times" in the late 1950s and 1960s. Burgo Tr. at 108-109, 123 (Tab 169). According to Mr. Burgo, Cornell-Dubilier dumped "containers with liquid inside" at the Site. Mr. Burgo described this liquid as "oily" and "light kind of gooey stuff." "Sometimes they'd [the containers] break open when he dumped it, and it would burn my eyes so I'd

have to move away from there." Burgo Tr. at 109 (Tab 169). Mr. Burgo saw Cornell-Dubilier at the Site approximately once or twice a week. Burgo Tr. at 110 (Tab 169).

4. Between 1952 and 1964, Edward J. Devlin drove a truck to Sullivan's Ledge approximately once a week. Devlin Tr. at 13-14 (Tab 170). Mr. Devlin saw a yellow, four-to-five-ton truck with CDE's name on it at Sullivan's Ledge whenever he was there. Mr. Devlin recalled seeing materials unloaded from CDE's truck. Mr. Devlin also recalled that one of CDE's drivers was named "Red." CDE disposed of waste at Sullivan's Ledge during the entire time (1952-1964) Mr. Devlin went to the Site. Devlin Tr. at 21-23 (Tab 170).

Mr. Devlin was familiar with CDE's yellow truck. He drove an Aerovox truck to CDE's plant in New Bedford to return barrels of oil to CDE. When he went there, he saw a yellow truck, the same kind he had seen at Sullivan's Ledge. Devlin Tr. at 34-35 (Tab 170).

5. Manuel Correia testified about loading flat bed trucks full of capacitors and taking the loads to Sullivan's Ledge. See Section I.J.6 of Supplemental Proffer. Mr. Correia also testified about taking drums of liquid waste to Sullivan's Ledge on the flat bed truck. Correia Tr. at 31-32 (Tab 167). Mr. Correia further testified about using CDE's stake body truck for disposal at Sullivan's Ledge and that they put "anything" on it, including drums, capacitors, waste, and Speedy Dry sands. Correia Tr. at 36 (Tab 167). Mr. Correia worked at CDE's New Bedford facility from 1967 until 1971 or 1972.

6. Joe Costa testified that he began working at CDE's New Bedford facility in 1958. He testified that Henry Sylvia was the driver of the CDE's truck which he described is yellow in color and with Cornell-Dubilier written on the side. Mr. Costa helped to load waste on to the truck. The waste consisted of capacitors and Speedy Dry which was used to soak up materials at the plant, including acetone and thinner. Mr. Costa testified that he rode on the truck with Mr. Sylvia and that they drove to Sullivan's Ledge to dispose of the waste. Mr. Costa testified that Mr. Sylvia drove the waste truck every day and that he followed a particular route to Sullivan's

Ledge. Mr. Costa also testified that Red Lyman was another CDE truck driver. Mr. Costa further testified that he did not begin himself to drive a CDE truck until 1962.⁶

7. Roland Savoie worked as a machine shop draftsman and tool designer at CDE's New Bedford plant for 32 years. Savoie Tr. at 9-10 (Tab 164). Mr. Savoie testified at trial that Joseph Costa and a man named "Red" removed waste from CDE's New Bedford plant and transported it for disposal. Savoie Tr. at 34-35 (Tab 164).

On one occasion, Mr. Costa told Mr. Savoie that Mr. Costa had been heading down Hathaway Road to Sullivan's Ledge when he suddenly lost the wheel to his truck. Capacitors went all over the road. "It is something that [I] would not ever forget however many years I worked there, because I've never heard of anything like it before. So it left a lasting impression as to Mr. Costa, the load of capacitors, and Sullivan's Ledge." Savoie Tr. at 39 (Tab 164). Mr. Savoie believed that his conversation with Mr. Costa occurred sometime in the 1960s or 1970s. Savoie Tr. at 39-40 (Tab 164).

8. Joseph Thibeault was a heavy equipment operator for the City of New Bedford, Department of Public Works from 1945 until 1965. Thibeault Depo. at 9 (Tab 173). Mr. Thibeault operated a bulldozer at various dumps, including at Sullivan's Ledge. Thibeault Depo. at 10 (Tab 173). Mr. Thibeault recalled seeing reject capacitors at Sullivan's Ledge when he operated his bulldozer. Thibeault Depo. at 33 (Tab 173). As he pushed material over with his bulldozer, he observed capacitors mixed up in the trash. Thibeault Depo. at 33 (Tab 173).

Mr. Thibeault testified that he was familiar with CDE. He knew that CDE manufactured capacitors and they were one of the companies that had disposed of waste at Sullivan's Ledge. Thibeault Depo. at 33-34, 55 (Tab 173). Mr. Thibeault recalled seeing CDE trucks at Sullivan's Ledge; CDE had its own truck with its name

⁶ A trial transcript of Mr. Costa's testimony has not yet been made available to the Sullivan's Ledge Group.

on it. Thibeault Depo. at 34-35 (Tab 173). Mr. Thibeault would see the CDE truck as soon it entered Sullivan's Ledge. "I'd see him when he came in; can't fail to notice, there was a big, big, trailer truck with Cornell-Dubilier on the truck. I knew it was them." Thibeault Depo. at 75 (Tab 173).

9. Arthur Labonte was a former employee of Pacific Oil Company who, during the 1960s, disposed of waste at Sullivan's Ledge one to three times a week. Labonte Tr. at 74-77, 82 (Tab 172). Mr. Labonte recalled observing CDE trucks at Sullivan's Ledge. Labonte Tr. at 78, 80 (Tab 172). Mr. Labonte also saw capacitors on the ground at Sullivan's Ledge. Labonte Tr. at 80-81 (Tab 172).
10. Garrett Randall Graham testified about a meeting he had in 1971 with CDE plant personnel, including Curtis Lopes. Mr. Graham's contemporaneous "call report" which was received into evidence as Plaintiffs' Exhibit 24, indicates that disposal of scrap capacitors was a topic of the meeting and that CDE informed Mr. Graham that CDE had been disposing of capacitors at Sullivan's Ledge "for years." (Tab 34).
11. Joseph Gendron was a sanitation worker for the City of New Bedford during the 1950s and 1960s. Gendron Tr. at 64, 65 (Tab 168). During that time, Mr. Gendron worked at the Shawmut Avenue landfill and incinerator. Gendron Tr. at 67 (Tab 168). Large capacitors, liquid wastes, and metal drums were not accepted for disposal at Shawmut Avenue. According to Mr. Gendron, there was a sign at entrance gate to Shawmut Avenue which notified the public of wastes which were not accepted for disposal. Gendron Tr. at 73-75, 81 (Tab 168). Mr. Gendron testified at trial that he had "no authority at the ledge, because that was non-burnable, you see." Gendron Tr. at 79 (Tab 168).

Sullivan's Ledge was located "right on the sidewalk" of Hathaway Road -- in the 1950s and 1960s, Hathaway Road was the main road which acted as the east-west connector for the City of New Bedford. Gendron Tr. at 78-79 (Tab 168). The Shawmut Avenue facilities were not as easily accessible as Sullivan's Ledge. Mr. Gendron testified that Shawmut Avenue landfill and incinerator was located a quarter or a half a mile off of

the street. Gendron Tr. at 70-71 (Tab 168). According to Mr. Gendron, trucks had to wait in line "until there was room on the charging floor; and then one or two of them [trucks] was called up in order to dump the material. When the floor was empty, we'd get more material up there. Sometimes we'd wait in line quite a while." In addition, trucks from the City of New Bedford were allowed to jump the line -- they were given first priority so that they could return to their household routes. Gendron Tr. at 72 (Tab 168).

12. In response to plaintiffs' requests for admission, defendant CDE admitted that "at certain times" during the 1950s and 1960s CDE employees using CDE's truck took wastes generated at the New Bedford facility off-site for disposal, including "on some occasions, some disposal" at Sullivan's Ledge. CDE further admitted that it generated as waste intact, sealed capacitors, mineral oils, PCB contaminated Fuller's earth, TCE contaminated Fuller's earth, zinc and cadmium and that "some" of this waste at "sometime or times" was disposed of at Sullivan's Ledge. CDE's Response to Plaintiffs' First Requests for Admissions at 8-9 (Tab 176).

III. Sullivan's Ledge is Widely Contaminated With PCBs and Other Hazardous Substances Associated With CDE's New Bedford Plant Waste Streams

A. The Sullivan's Ledge Site is Widely Contaminated with PCBs and Volatile Organic Compounds, Including Trichloroethylene

1. As described in the Environmental Protection Agency's ("EPA") Record of Decision ("ROD") for Sullivan's Ledge, between 1986 and 1988, EPA conducted remedial investigations at Sullivan's Ledge. ROD at 5. In its investigations, EPA detected over 80 different contaminants at Sullivan's Ledge. ROD at 12. In particular, EPA found widespread PCB contamination in the soils at the Site and widespread volatile organic compound ("VOC") contamination in the groundwater at Sullivan's Ledge. ROD at 5-11.
2. VOCs found at the Site include trichlorethylene (trichloroethene), toluene and xylene. ROD at 72.
3. High concentrations of PCBs are present in surface soil, subsurface soil and sediments at Sullivan's Ledge. ROD at 5. Unsaturated soils are contaminated primarily with PCBs,

polycyclic aromatic hydrocarbons ("PAHs") and lead. ROD at 7. In its investigations, EPA detected maximum measured soil concentrations of 2,400 ppm PCBs at Sullivan's Ledge. ROD at 7.

4. Soils have eroded from the Site into the unnamed stream and have been transported from the Site. ROD at 7. As a result, the sediments in the unnamed stream, Middle Marsh, four golf course water hazards, and a portion of the Apponagansett Swamp are contaminated with PCBs from the Sullivan's Ledge Site. ROD at 7. Contaminants detected in sediments include inorganics and organics, primarily PCBs and PAHs. ROD at 7. Significant levels of PCBs in sediments were found within these areas. ROD at 7.
5. EPA performed a risk assessment of the Site to estimate the probability and magnitude of potential adverse human health and environmental effects from exposure to contaminants found at the Site. The assessment concluded that PCBs contribute the "major portion" of the total risk associated with direct contact with subsurface soil (ROD at 13-14), ingestion of ground water (ROD at 14), and exposure to sediments (ROD at 15-18). Specifically with respect to exposure to sediments, EPA determined that a potential exists for significant risk to wildlife through consumption of aquatic organisms exposed to PCB-contaminated sediments within the unnamed stream, its tributaries and portions of nearby water hazards. EPA also determined that aquatic organisms in these areas may be at risk of reproductive impairment or other adverse effects. ROD at 16-18. The ROD notes that "it is of particular concern that PCB concentrations (Aroclor 1254) of 1.2 and 1.5 ug/l are associated with measurable effects to growth, reproduction, survival, and or metabolic upset in some aquatic organisms." ROD at 18.
6. VOCs were the predominant groundwater contaminants found during EPA's investigations. ROD at 8. VOCs are present in overburden groundwater, shallow bedrock groundwater and deep bedrock groundwater at Sullivan's Ledge. ROD at 8.
7. VOCs detected in groundwater samples from overburden monitoring wells include, among other things, dichloroethene ("DCE"), trichloroethylene ("TCE") and vinyl chloride. ROD at 8. The overburden contaminant plume extends from the Site, with the highest contamination around the northmost pit, to the southern edge of Middle Marsh. ROD at 8.

8. The shallow bedrock plume is similar in configuration and location to the overburden plume. ROD at 9. However, VOC contamination in groundwater increases with depth. ROD at 9. The VOCs detected in shallow bedrock groundwater were similar to the VOCs in the overburden aquifer, but were detected at increased frequency and concentration. ROD at 9. The VOCs detected in the shallow bedrock groundwater include DCE, TCE and vinyl chloride.
9. TCE, DCE and vinyl chloride account for 90 percent of the contamination found in the deep bedrock groundwater. ROD at 10. EPA found it particularly significant that in the deep bedrock groundwater, TCE was detected at an elevated concentration of 270 ppm, at greater than 200 feet below the ground surface and over 1,000 feet from the Site. ROD at 10.
10. The primary surface water contaminants at Sullivan's Ledge include TCE and vinyl chloride. ROD at 10. TCE and other VOCs also are present in groundwater seeps at the Site. ROD at 11.
11. The toxicity, environmental fate and transport of PCBs and various VOCs, as well as the volumes of PCBs and TCE necessary to cause the environmental harm at Sullivan's Ledge are described in the Affidavit of Robert H. Harris, Ph.D. attached at Tab 177.

B. The Remedy Addresses the Mass of Contaminants at Sullivan's Ledge, Including PCBs and VOCs.

1. Following its investigations, EPA selected a remedy for the first operable unit (OU1) at Sullivan's Ledge. The remedy is described in the ROD, which was signed by the Administrator of EPA Region I on June 29, 1989 and was modified by an Explanation of Significant Differences ("ESD") on July 26, 1995.
2. The remedy involves a comprehensive approach to Site remediation by managing the sources of contamination at the Site, the migration of contaminants from the Site and exposure to Site contaminants. As described in the ROD, the remedy consists of the following nine components: site preparation; excavation, dewatering, solidification and on-site disposal of soils; excavation, dewatering, solidification and on-site disposal of contaminated sediments; construction of an impermeable cap over an 11-acre area; diversion and lining of a portion of an unnamed stream; collection and treatment of contaminated

groundwater; wetlands restoration/enhancement; long-term environmental monitoring; and institutional controls, including restrictions on ground use. ROD at 3-4. The ESD modified the remedy by reducing the amount of soil needing excavation, eliminating most soil solidification, enhancing the cap, and requiring additional Site studies.

3. The disposal area soil remediation component of the remedy entails excavation and treatment of soils contaminated with total PCBs at concentrations of 50 ppm or greater, and total carcinogenic PAHs at concentrations of 30 ppm or greater, located in the unsaturated zone. ROD at 44. Unsaturated soils in areas outside the 12-acre disposal area with PCB concentrations of 10 ppm or greater will be excavated, transported to and disposed of under the cap. ROD at 45.
4. The groundwater collection system for Sullivan's Ledge will consist of an active groundwater collection system and a passive collection system. ROD at 47-48. EPA will use two criteria to evaluate achievement of the cleanup goal of the active collection system: (1) a concentration range of 1 to 10 mg/l of total VOCs, and/or (2) an asymptotic curve using groundwater monitoring data indicating that significant reductions in VOC concentrations over time are no longer being achieved. ROD at 48. The purpose of the groundwater component of the remedy is to significantly reduce the contaminant mass in the aquifer and protect local surface water bodies. ROD at 47.

C. The Testimony of Thomas Jordan

1. A full trial transcript of Mr. Jordan's testimony has not yet been made available to the Sullivan's Ledge Group. A summary of Mr. Jordan's testimony is found at Tab 174.

IV. The Sullivan's Ledge Group Has Incurred and Will Incur Response Costs in Connection With the Cleanup of Sullivan's Ledge

1. At trial, the Sullivan's Ledge Group intends to show that it has incurred over \$8 million of response costs in connection with the cleanup at Sullivan's Ledge. These costs are described in a total expenditure statement that is attached at Tab 178.

Tom Jordan has also provided an estimate of the future cleanup costs expected at Sullivan's Ledge. At trial, Mr. Jordan testified that the estimated present worth costs of the cleanup is \$33,350,000.

Respectfully Submitted,

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